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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]25

[redacted] HIGHTOWER, R. A. WRIGHT, C. E. ANDREW, ET AL., APPELLANTS,

vs.

[redacted] NATIONAL BANK OF MACON, GEORGIA.

[redacted]

(28,688)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1921.

## No. 733.

W. H. HIGHTOWER, B. A. WRIGHT, C. H. ANDREW, ET AL., APPELLANTS,

*vs.*

THE AMERICAN NATIONAL BANK OF MACON, GEORGIA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D. 1921, at Atlanta, Georgia, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, Circuit Judges, and the Honorable Samuel H. Sibley, District Judge.

W. H. HIGHTOWER et als., Appellants,

versus

AMERICAN NATIONAL BANK OF MACON, Appellee.

Be is remembered, That heretofore, to-wit, on the 4th day of June, A. D. 1921, a transcript of the record in the above styled cause, pursuant to an appeal from the District Court of the United States for the Southern District of Georgia, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3722, as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE SOUTHERN DSTRICT OF GEORGIA.

AMERICAN NATIONAL BANK OF MACON,

Plaintiff,

versus In Equity No. 25.

COMMERCIAL NATIONAL BANK OF MACON AND ITS SHAREHOLDERS,

Defendants,

---

BILL IN NATURE OF CREDITORS' BILL TO ENFORCE SHAREHOLDERS STATUTORY LIABILITY.

To the Honorable Judges of the District Court of the United States in and for the Western Division of the Southern District of Georgia:

The American National Bank of Macon, a national banking association organized and existing under the Act of Congress known as the National Banking Act, brings this its bill of complaint against the Commercial National Bank of Macon, a national banking association organized and existing under the Act of Congress

known as the National Banking Act, located in the City of Macon in the State of Georgia and in the Western Division of the Southern District of Georgia, hereinafter referred to as the Bank, and against the shareholders of the said Bank, the names and places of residence of said several shareholders and the number of shares owned by them, respectively, being hereinafter stated and set forth. And for its cause of action plaintiff states:

1: That this suit is brought under the laws of the United States, and that the amount in controversy herein exceeds the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

2: Plaintiff is a creditor of the said Bank in the sum of Three Hundred and Twenty Thousand, One Hundred and Two Dollars and Eighty-two Cents ($320,102.82), besides interest on said sum at the rate of seven per cent (7%) per annum from the 22nd day of November, 1916, and plaintiff brings this suit in the nature of a creditors' bill on behalf of itself and all other creditors of the said Bank against the said Bank and against its shareholders for the purpose of enforcing the statutory liability of said shareholders for the payment of the indebtedness of the said Bank, in pursuance of the Acts of Congress authorizing said statutory liability of the shareholders in national banking associations to be enforced by the creditors of said associations.

3: Plaintiff's said indebtedness against the said Bank arose in the following manner:

On the 31st day of July, 1914, the said Bank applied to plaintiff for a loan of money to enable it to meet its

obligations and to pay and satisfy its depositors. After some negotiation between said Bank and plaintiff, plaintiff agreed to assume and undertook to pay all of the liabilities of the said Bank when and as the same should be presented for payment, and as security for the sums advanced and to be advanced the said Bank under a resolution of the Board of Directors thereof adopted at a meeting of the Board held on August 1st, 1914, transferred, assigned and conveyed to plaintiff all of its assets of every kind and character, including its cash on hand, bills receivable, stocks, bonds, and securities, its banking house and other real estate, and all
3 other assets.

4: Pursuant to said agreement, the plaintiff took charge of all of said assets so transferred to it by the said bank as security on the 3d day of August, 1914, and from and after that date it paid in due course and as called upon all of the depositors of the said Bank, its bills payable, and other liabilities.

5: The agreement entered into between plaintiff and the said Bank was reduced to writing and duly executed on behalf of said Bank and of plaintiff by the executive officers thereof, respectively. A copy of said articles of agreement is hereunto annexed, marked Exhibit A, and made a part of this bill, and reference to the same is prayed as often as may be necessary.

6: Thereafter, at a meeting of the shareholders of the said Bank the contract between the plaintiff and said Bank as embodied and set forth in the articles of agreement hereinbefore referred to was expressly ratified and approved by said shareholders, more than two-thirds of all the shareholders being represented at said meeting

and voting in favor of the ratification of said contract.

7: Thereafter, to-wit: on the 30th day of September, 1914, another meeting of shareholders was held, of which notice was given as required by the articles of association of said Bank, and at said meeting a resolution was adopted placing the said Bank in voluntary liquidation under the provisions of Sections 5220 and 5221 of the United States Revised Statutes, said resolution having been adopted by the vote of more than two-thirds of all the shareholders of said Bank. Said resolution was duly certified to the Comptroller of the Currency, and was duly approved by him, and in pursuance of said resolution said Bank was placed, and is now, in process of voluntary liquidation. At said meeting the articles of agreement between said Bank and plaintiff were again ratified and approved, more than two-thirds of all the shareholders voting in favor of such ratification.

4 8: Pursuant to the articles of agreement, plaintiff took charge of the assets of said Bank and proceeded to reduce the same to cash and to apply the amounts received to reimburse itself for the amount which it had advanced in the payment of the liabilities of the said Bank assumed and paid by it in pursuance of the said articles of agreement.

9: After applying to the indebtedness incurred by the payment of the liabilities of said Bank the amounts realized from its assets, there is still due to plaintiff by the said Bank the sum of Three Hundred and Twenty Thousand One Hundred and Two Dollars and Eighty-Two Cents ($320,102.82), together with interest there-

on at the rate of seven per cent. (7%) per annum, the rate of interest agreed to be paid by said Bank under said contract, from the 22d day of November, 1916, upon which date the last credit entry was made upon the account.

10: The assets of said Bank still remaining uncollected and undisposed of are of very little value and there will not be realized from them an amount sufficient to reduce plaintiff's debts against said Bank below Three Hundred Thousand Dollars ($300,000.00), the amount of the capital stock of said Bank.

11: The said Bank had a capital stock of Three Hundred Thousand Dollars ($300,000.00), divided into three thousand (3,000) shares, of One Hundred Dollars ($100.00) each.

12: By the provisions of the Acts of Congress, known as the National Banking Act, under which said Bank was incorporated and organized, the shareholders are "individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares."

13: The liquidation of said Bank being now practically completed, and it being manifest that the remaining assets are insufficient to pay the liabilities of said Bank, plaintiff as a creditor thereof is entitled under the law to enforce for its benefit and for the benefit of the other creditors of said Bank, if any exist, the statutory liability of the shareholders

and to apply the amounts paid thereon to the satisfaction of the indebtedness of said Bank.

14: The following persons holding shares of stock in said Bank in the amounts set opposite their names, respectively, are residents of the Southern District of Georgia, their addresses being as herein stated, to-wit

In the Western Division of the Southern District.

| Shareholder | P. O. Address | No. Shares. |
|---|---|---|
| Adams, C. M. | Macon, Bibb County | 10 |
| Anderson W. T. | Macon, Bibb County | 70 |
| Andrew, C. H. | Macon, Bibb County | 8 |
| Andrew, C. H., Trustee for Clarence, James and Martha Andrew | Macon, Bibb County | 1 |
| Armstrong, Guy | Macon, Bibb County | 20 |
| Atlantic National Fire Insurance Company, a Georgia corporation, having its principle office at | Macon, Bibb County | 108 |
| Bairman, Miss Mary | Macon, Bibb County | 1 |
| Bairman, Mrs. W. M. | Macon, Bibb County | 1 |
| Beeland, W. J. | Macon, Bibb County | 3 |
| Benton, L. O. | Monticello, Jasper County | 10 |
| Benton, L. O. & Brother, a co-partnership composed of L. O. Benton and E. C. Benton, both of | Monticello, Jasper County | 45 |
| Blount, Roy | Barnesville, Pike County | 10 |
| Bradley, Oscar | Macon, Bibb County | 25 |

| 6 Shareholder | P. O. Address | No. Shares. |
|---|---|---|
| Burghard, L. H. | Macon, Bibb County | 10 |
| Central Trust Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 10 |
| Cobb, J. J., Agt. | Macon, Bibb County | 1 |
| Cobb, J. J. | Macon, Bibb County | 35 |
| Commercial & Savings Bank, a Georgia corporation, having its principal office at | Macon, Bibb County | 631 |
| Dasher, Arthur L. | Macon, Bibb County | 5 |
| Davis, R. L. | Monticello, Jasper County | 5 |
| Dent, J. Tom | Macon, Bibb County | 2 |
| Dunwody, J. Marion | Macon, Bibb County | 2 |
| Dunwody, Kenneth W. | Macon, Bibb County | 1 |
| Dunwody, W. Elliott | Macon, Bibb County | 1 |
| Dunwody, W. E. | Macon, Bibb County | 8 |
| Dure, Leon S. | Macon, Bibb County | 43 |
| Estes, Claud | Macon, Bibb County | 2 |
| Haley, Herbert F. | Macon, Bibb County | 25 |
| Hart, J. Freeman | Macon, Bibb County | 2 |
| Hertwig, F. H. | Macon, Bibb County | 5 |
| Hightower, W. H. | Thomaston, Upson County | 5 |
| Hightower, R. E. | Thomaston, Upson County | 30 |
| Hinkle, A. B. | Macon, Bibb County | 10 |
| Hinton, J. C. | Macon, Bibb County | 10 |
| Hubbel, Evelyn W. | Macon, Bibb County | 5 |
| Hubbel, G. W. | Macon, Bibb County | 10 |
| Huguenin, E. D. | Macon, Bibb County | 10 |
| Jelks, E. N. | Macon, Bibb County | 25 |
| Jelks, T. M. | Macon, Bibb County | 25 |
| Jelks, Mrs. T. M. | Macon, Bibb County | 2 |
| Jessup, J. L. | Macon, Bibb County | 10 |

| | | |
|---|---|---|
| Lane, A. W. | Macon, Bibb County | 30 |
| Leak, Mrs. H. G. | Macon, Bibb County | 1 |
| Lewis, E. N. | Macon, Bibb County | 131 |
| Macon Cooperage Company, a Georgia Corporation, having its principal office at | Macon, Bibb County | 1 |

| 7 Shareholder | P. O. Address | No. Shares |
|---|---|---|
| Mallary, E. Y. | Macon, Bibb County | 10 |
| Mallary, F. L. | Macon, Bibb County | 10 |
| Middlebrooks, E. A. | Macon, Bibb County | 2 |
| Minter, J. W. | Macon, Bibb County | 5 |
| Morgan, Cecil | Macon, Bibb County | 50 |
| Max Morris Drug Company, a Georgia Corporation, having its principal office at | Macon, Bibb County | 2 |
| McEvoy Book and Sationery Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 2 |
| McKenna, W. A. | Macon, Bibb County | 2 |
| Pace, Miss Meta Isabel | Macon, Bibb County | 5 |
| Parker, T. C. | Macon, Bibb County | 150 |
| Payne, J. W. | Macon, Bibb County | 10 |
| Pellew, L. E. | Macon, Bibb County | 1 |
| Mrs. Bessie N. Proudfit, Executrix of the will of A. Proudfit, deceased. Certificate standing in the name of A. Proudfit, the intestate | Macon, Bibb County | 10 |

| | | |
|---|---|---|
| Renfroe-Ellis-Permenter Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 1 |
| Ries, F. C. | Macon, Bibb County | 35 |
| Rahn, Mrs. H. G. | Dublin, Laurens County | 1 |
| Roush, W. A. | Macon, Bibb County | 10 |
| Roush, W. A., Agt. | Macon, Bibb County | 10 |
| Sams, A. J. | Macon, Bibb County | 5 |
| Sheridan, Ed. A. | Macon, Bibb County | 5 |
| Shorter, Mrs. Lizzie M. | Macon, Bibb County | 1 |
| Smith, Joel A. | Danville, Twiggs County. | 10 |
| Smith, Miss Mary Lou | Jackson, Butts County . | 3 |
| Smith, R. L. | Macon, Bibb County | 35 |
| Southern Securities & Financing Company, a Georgia corporation, having its principal office at | Monticello, Jasper Co. | 103 |



| Shareholder | P. O. Address | No. Shares. |
|---|---|---|
| Stafford, J. W. | Macon, Bibb County | 1 |
| Stafford, Mrs. Rubie | Barnesville, Pike County | 10 |
| Tindall, H. C. | Macon, Bibb County | 6 |
| Tindall, Julia C., Guardian for Bessie K. Tindall | Macon, Bibb County | 1 |
| Tindall, Julia C., Guardian for F. C. Tindall | Macon, Bibb County | 1 |
| Tindall, Julia C., Guardian for J. S. Tindall, deceased | Macon, Bibb County | 2 |
| Todd, P. D. | Cochran, Bleckley County | 15 |
| Wells, W. D. | Macon, Bibb County | 1 |
| Wheeler, W. P. | Macon, Bibb County | 5 |
| Winburn, W. E. | Oglethorpe, Macon County | 5 |
| Wiley, C. M. | Macon, Bibb County | 1 |

Williams, F. W. .....Macon, Bibb County ... 3
Williams, P. H. .....Macon, Bibb County ... 3
Wright, B. A. .....Indian Springs, Butts Co. 50

W. M. Bairman, late of Macon, Bibb County, owning 15 shares of stock of said Bank, died intestate. There has been no representation upon his estate, and he left no property except said 15 shares.

In the Eastern Division of the Southern District.

Shareholder P. O. Address. No. Shares.

Birdsey, A. H. .....Savannah, Chatham Co. 23
Routzahn, R. G. .....Savannah, Chatham Co. 15

In the Northeastern Division of the Southern District.

Shareholder P. O. Address No. Shares.

Harlan, R. J. .....Wadley, Jefferson County 1
Howell, Queen V. (Col.) ..Midville, Burke County 8
Irvin, Alexander .....Washington, Wilkes Co. 20

In the Southwestern Division of the Southern District.

9 Shareholder P. O. Address No. Shares.

Lewis, John F. .....Valdosta, Lowndes Co. .200
Little, W. A. .....Douglas, Coffee County 15
Oglesby, Mrs. Lamar LewisQuitman, Brooks County 50
Springer, Mrs. J. E. .....Valdosta, Lowndes Co.. 10

15: The following persons holding stock in the amounts set opposite their names, respectively are resi-

dents of the State of Georgia, but without the Southern District of Georgia, their places of residence being as herein stated, to-wit:

In the Northern District of Georgia.

| Shareholder | P. O. Address | No. Shares. |
|---|---|---|
| Anderson, N. Z. | Covington, Newton Co. | 40 |
| Cheatham, L. B. | Atlanta, Fulton County | 2 |
| Coon, J. S. | Atlanta, Fulton County | 15 |
| Cone, John F. | Atlanta, Fulton County | 30 |
| Dickerson, R. W. | McDonough, Henry Co. | 15 |
| Draper, Wallace | Atlanta, Fulton County | 1 |
| Draper, Jessie | Atlanta, Fulton County | 1 |
| Grant, Mrs. Annie Inman. | Atlanta, Fulton County | 25 |
| Grant, John W. | Atlanta, Fulton County | 25 |
| Martin, E. L. | Atlanta, Fulton County | 6 |
| Myers, W. T. | Jonesboro, Clayton Co. | 10 |
| North, Mrs. Mary D. | Newnan, Coweta County | 1 |
| Pullen, P. W. | McDonough, Henry Co. | 30 |
| Stewart, A. M. | East Point, Fulton County | 50 |
| Streyer, Miss Jessie P. | Lumpkin, Stewart County | 27 |
| Wilkins, J. J. | Athens, Clark County | 2 |

16: The following named persons are shareholders of said Bank in the amounts set opposite their names, respectively, and reside without the State of Georgia, their places of residence being herein set forth, to-wit:

Without the State of Georgia.

| 10 Shareholder | P. O. Address | No. Shares. |
|---|---|---|
| Bene, C. J. F. | 25 Carew Bldg., Cincinnati, O. | 35 |
| Bennor, Mrs. Jennie | 1828 N. 28 Street, Philadelphia, Pa. | 5 |
| Brandon, C. H. | Nashville, Tennessee | 50 |
| Briggs, John E. | 623 F. Street, S. West., Washington, D. C. | 5 |
| Christian, R. P. | Houston, Texas | 10 |
| Conn, Mrs. C. G. | 520 W. 114th Street, New York | 2 |
| Daniel, W. A. | 311 South Corona Street, Denver, Colo. | 28 |
| Daniel, Mary Virginia | 311 South Corona Street, Denver, Colo. | 2 |
| Draper, Robert D. | Care Southern Coal Company, Amarillo, Texas | 1 |
| Draper, Wm. M. | Murfreesboro, Tenn | 1 |
| Foley, Peter C. | Olean, New York | 2 |
| Guerry, Homer | 509 2d Nat. Bank Bldg., Washington, D. C. | 35 |
| Hagedorn, Mrs. Jennie, Executrix of the will of Z. Hagedorn, late of Troup County, Georgia, deceased. Certificate standing in the name of the testator, Z. Hagedorn | Montgomery, Ala | 7 |
| Manee, Amanda B. | 1897 Madison Avenue, New York | 10 |
| Manee, E. Stewart | 1897 Madison Avenue, New York | 25 |

| | | |
|---|---|---|
| Minton, J. F. ..... | Houston, Texas ..... | 5 |
| Morgan, J. Dudley ..... | 919 15th Street, N. W., Washington, D. C. .. | 5 |
| Newstedt, Anna Duhne ... | 2599 Conservatory Rd., Hyde Park, Cincinnati, Ohio ..... | 20 |

| 11 Shareholder | P. O. Address | No. Shares. |
|---|---|---|
| Palmer, Mrs. Leigh C. .... | 64 The Dresden, Washington, D. C. ..... | 1 |
| Patterson, A. L. ..... | New Orleans, La. ..... | 50 |
| Patterson, A. L., Pres. .... | New Orleans, La. ..... | 67 |
| Wilcox, Henry B. ..... | Care First National Bank Baltimore, Md. ..... | 10 |

17: The shareholders whose names are hereinbefore recited in the preceding paragraphs, owning in the aggregate three thousand (3,000) shares of stock of the aggregate value of Three Hundred Thousand Dollars ($300,000.00), constitute all of the shareholders of said Bank.

18: After applying to plaintiff's debt against the said Bank the amount which it is estimated will be collected out of the remaining assets of said Bank and adding to plaintiff's debt the interest thereon at the contract rate of seven per cent. (7%) per annum, the amount of plaintiff's indebtedness will exceed the sum of Three Hundred Thousand Dollars ($300,000.00), the amount of the capital stock of said Bank, and to pay said indebtedness an assessment on each share of stock of one hundred per cent. (100%) thereof will be required.

Wherefore, plaintiff waiving discovery and answer under oath from each and all of the defendants, prays:

(a): That the amount of the liabilities of the said Bank now outstanding and unsatisfied may be ascertained and determined.

(b): That the amount and value of the uncollected and undisposed of assets of the said Bank may likewise be ascertained and determined.

(c): That the shareholders of said Bank, with the number of shares owned by each and the amount which should be assessed against each share in order to pay off and satisfy the indebtedness of said Bank, may be ascertained and determined.

12 (d): That judgments may be entered against the several shareholders for the amounts found to be due by them, respectively on account of their said liability.

(e): That such ancillary proceedings as may be necessary to collect and enforce the liability against the shareholders residing without the State of Georgia and the Southern District of Georgia may be authorized and may be instituted.

(f): That plaintiff may have such other, further and general relief as may be meet and proper in the premises.

(g): That the writ of subpoena may issue, directed to the said Commercial National Bank of Macon and to the following named persons, shareholders of said Bank who reside within the Southern District of Georgia, to-wit:

In the Western Division of the Southern District.

| Shareholder | P. O. Address. |
|---|---|
| Adams, C. M. | Macon, Bibb County. |
| Anderson, W. T. | Macon, Bibb County. |
| Andrew, C. H. | Macon, Bibb County. |
| Andrew, C. H., Trustee for Clarence, James and Martha Andrew | Macon, Bibb County. |
| Armstrong, Guy | Macon, Bibb County. |
| Atlantic National Fire Insurance Company, a Georgia corporation, having its principal office at | Macon, Bibb County. |
| Bairman, Miss Mary | Macon, Bibb County. |
| Bairman, Mrs. W. M. | Macon, Bibb County. |
| Beeland, W. J. | Macon, Bibb County. |
| Benton, L. O. | Monticello, Jasper County. |
| Benton, L. O. & Brother, a copartnership composed of L. O. Benton and E. C. Benton, both of | Monticello, Jasper County. |

| 13 Shareholder | P. O. Address |
|---|---|
| Blount, Roy | Barnesville, Pike County. |
| Bradley, Oscar | Macon, Bibb County. |
| Burghard, L. H. | Macon, Bibb County. |
| Central Trust Company, a Georgia corporation, having its principal office at. | Macon, Bibb County. |
| Cobb, J. J., Agt. | Macon, Bibb County. |
| Cobb, J. J. | Macon, Bibb County. |

Commercial & Savings Bank,
a Georgia corporation,
having its principal office
at ..... Macon, Bibb County.
Dasher, Arthur L. ..... Macon, Bibb County.
Davis, R. L. ..... Monticello, Jasper County.
Dent, J. Tom ..... Macon, Bibb County.
Dunwody, J. Marion ..... Macon, Bibb County.
Dunwody, Kenneth W. .... Macon, Bibb County.
Dunwody, W. Elliott ..... Macon, Bibb County.
Dunwody, W. E. ..... Macon, Bibb County.
Dure, Leon S. ..... Macon, Bibb County.
Estes, Claud ..... Macon, Bibb County.
Haley, Herbert F. ..... Macon, Bibb County.
Hart, J. Freeman ..... Macon, Bibb County.
Hertwig, F. H. ..... Macon, Bibb County.
Hightower, W. H. ..... Thomaston, Upson County.
Hightower, R. E. ..... Thomaston, Upson County.
Hinkle, A. B. ..... Macon, Bibb County.
Hinton, J. C. ..... Macon, Bibb County.
Hubbel, Evelyn W. ..... Macon, Bibb County.
Hubbel, G. W. ..... Macon, Bibb County.
Huguenin, E. D. ..... Macon, Bibb County.
Jelks, E. N. ..... Macon, Bibb County.
Jelks, T. M. ..... Macon, Bibb County.
Jelks, Mrs. T. M. ..... Macon, Bibb County.
Jessup, J. L. ..... Macon, Bibb County.
Lane, A. W. ..... Macon, Bibb County.
Leak, Mrs. H. G. ..... Macon, Bibb County.
Lewis, E. N. ..... Macon, Bibb County.

| 14 | Shareholder | P. O. Address |
|---|---|---|
| Macon Cooperage Company, a Georgia Corporation, having its principal office at | | Macon, Bibb County. |
| Mallary, E. Y. | | Macon, Bibb County. |
| Mallary, F. L. | | Macon, Bibb County. |
| Middlebrooks, E. A. | | Macon, Bibb County. |
| Minter J. W. | | Macon, Bibb County. |
| Morgan, Cecil | | Macon, Bibb County. |
| Max Morris Drug Company, a Georgia corporation, having its principal office at | | Macon, Bibb County. |
| McEvoy Book and Stationery Company, a Georgia corporation, having its principal office at | | Macon, Bibb County. |
| McKenna, W. A. | | Macon, Bibb County. |
| Pace, Miss Meta Isabel | | Macon, Bibb County. |
| Parker, T. C. | | Macon, Bibb County. |
| Payne, J. W. | | Macon, Bibb County. |
| Pellew, L. E. | | Macon, Bibb County. |
| Mrs. Bessie N. Proudfit, Executrix of the will of A. Proudfit, deceased. Certificate standing in the name of A. Proudfit, the intestate | | Macon, Bibb County. |
| Renfroe-Ellis-Permenter Company, a Georgia corporation, having its principal office at | | Macon, Bibb County. |
| Ries, F. C. | | Macon, Bibb County. |

Rahn, Mrs. H. G. .....Dublin, Laurens County.
Roush, W. A. .....Macon, Bibb County.
Roush, W. A., Agt. .....Macon, Bibb County.
Sams, A. J. .....Macon, Bibb County.
Sheridan, Ed. A. .....Macon, Bibb County.
Shorter, Mrs. Lizzie M. ..Macon, Bibb County.
Smith, Joel A. .....Danville, Twiggs County.
Smith, Miss Mary Lou ...Jackson, Butts County.
Smith, R. L. .....Macon, Bibb County.

| 15 | Shareholder | P. O. Address |
|---|---|---|
| Southern Securities & Financing Company, a Georgia corporation, having its principal office at ..... | | Monticello, Jasper County. |
| Stafford, J. W. ..... | | Macon, Bibb County. |
| Stafford, Mrs. Rubie ..... | | Barnesville, Pike County. |
| Tindall, H. C. ..... | | Macon, Bibb County. |
| Tindall, Julia C., Guardian for Bessie K. Tindall ... | | Macon, Bibb County. |
| Tindall, Julia C., Guardian for F. C. Tindall ..... | | Macon, Bibb County. |
| Tindall, Julia C., Guardian for J. S. Tindall, deceased | | Macon, Bibb County. |
| Todd, P. D. ..... | | Cochran, Bleckley County. |
| Wells, W. D. ..... | | Macon, Bibb County. |
| Wheeler, W. P. ..... | | Macon, Bibb County. |
| Winburn, W. E. ..... | | Oglethorpe, Macon County. |
| Wiley, C. M. ..... | | Macon, Bibb County. |
| Williams, F. W. ..... | | Macon, Bibb County. |
| Williams, P. H. ..... | | Macon, Bibb County. |
| Wright, B. A. ..... | | Indian Springs, Butts County. |

In the Eastern Division of the Southern District.

| Shareholder. | P. O. Address. |
|---|---|
| Birdsey, A. H. | Savannah, Chatham County. |
| Routzahn, R. G. | Savannah, Chatham County. |

In the Northeastern Division of the Southern District.

| Shareholder. | P. O. Address. |
|---|---|
| Harlan, R. J. | Wadley, Jefferson County. |
| Howell, Queen V. (Col.) | Midville, Burke County. |
| Irvin, Alexander | Washington, Wilkes County. |

16 In the Southwestern Division of the Southern District.

| Shareholder | P. O. Address. |
|---|---|
| Lewis, John F. | Valdosta, Lowndes County. |
| Little, W. A. | Douglas, Coffee County. |
| Oglesby, Mrs. Lamar Lewis. | Quitman, Brooks County. |
| Springer, Mrs. J. E. | Valdosta, Lowndes County. |

HARDEMAN, JONES, PARK & JOHNSTON,
Solicitors for American National Bank of Macon, Plaintiff.

GEO. S. JONES,
ORVILLE A. PARK,
Of Counsel.

Filed December 22, 1916.

META ERWIN, Deputy Clerk.

## EXHIBIT A.

Georgia, Bibb County.

Articles of agreement for the Liquidation of the Commercial National Bank of Macon, Georgia, by the American National Bank of Macon, Georgia, both being National Banking Associations, made and entered into between said Banks as the contracting parties.

Whereas, on the 1st day of August, 1914, the Board of Directors of the Commercial National Bank, at a meeting of said Board duly and regularly called, adopted a resolution, which authorized the officers of said Association to commence proceedings for the liquidation of said Association under Sections 5220 and 5223 of the U. S. Revised Statutes, for consolidation with said American National Bank, and to transfer to said American National Bank all the assets of said Commercial National Bank, which assets were by said resolution so transferred and assigned, in order to fully protect and secure said American National Bank for all
17 moneys advanced or to be advanced by said Association in the assumption and payment of the liabilities of said Commercial National Bank shown by a list of said liabilities hereto attached and identified as Exhibit "A" and by the signature of the parties hereto; and which said resolution further provided that said American National Bank should take over the business of said Commercial National Bank, liquidate said assets, and account to the shareholders of said Commercial National Bank for any overplus which might remain after paying the depositors and other indebtedness of said Commercial National Bank in full, and the expense of realizing on the assets so transferred, the said American National Bank to charge nothing for its

services in so doing; and which resolution further authorized and directed the officers of said Commercial National Bank to make such contract with the American National Bank as might be necessary to appropriate in order to carry out the general purposes of said resolution, the details of said contract to be left to the discretion of said officers; and

Whereas, on the same date, the Board of Directors of the American National Bank, at a meeting of said Board duly and regularly called, adopted a resolution whereby said American National Bank, assumed the payment of said depositors and other liabilities of said Commercial National Bank, shown by the list of liabilities set out in Exhibit "A" hereto attached and hereinbefore referred to, upon condition that the assets of said Commercial National Bank should be transferred to said American National Bank sufficient in amount and in value in the estimation of the officers of the American National Bank to fully protect and secure said Association for any and all amounts, payment of which was assumed under said resolution; and which resolution authorized the officers of said Association to make such contract as might be necessary to carry out the purposes of said resolution, the details to be left to the discretion of said officers; and

Whereas, the preliminaries and conditions in said resolution mentioned have been complied with, and the assets of the Commercial National Bank have
18 been delivered to the American National Bank;

Now, therefore, these Articles of Agreement witness:

I.

That said Commercial National Bank has transferred, assigned, conveyed and confirmed, and does by these presents transfer, assign, convey and confirm unto the American National Bank of Macon, Georgia, its successors and assigns, all of the assets of every kind and description, including cash and cash items on hand at the close of business on August 1, 1914, bills receivable, bonds, real estate and personal property and interests therein, and choses in action of all kinds, including all the United States bonds now on deposit with the Treasurer of the United States as security for the circulation of the Commercial National Bank of Macon and for deposits of United States deposits; to have and to hold the same unto it said the American National Bank of Macon, its successors and assigns, in fee-simple, forever; and the title to said assets and each and all thereof said the Commercial National Bank of Macon for itself and its successors hereby warrants unto said the American National Bank, its successors and assigns, against the claim of all persons whatsoever.

II.

That in contemplation of the liquidation of said Commercial National Bank under Sections 5220, 5221 and 5223 U. S. Revised Statutes, said Commercial National Bank, by its officers and directors, will call a meeting of the shareholders of said Association to be held at Macon, Georgia, on August 12, 1914, and on the date or dates to which said meeting may be from time to time adjourned, and will procure proper resolutions by said shareholders and a sufficient majority thereof to comply with the law in such cases made and provided, liqui-

dating said Association and consolidating same with the American National Bank of Macon, by the 19 purchase of the assets of said Commercial National Bank by the American National Bank, but without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank; and ratifying and confirming the action of the Board of Directors of said Commercial National Bank as herein recited; and ratifying and confirming this contract.

III.

That said Commercial National Bank will also procure proper resolutions to be passed by said shareholders, appointing said American National Bank as liquidating agent for said Commercial National Bank in said liquidation for consolidation as aforesaid, said liquidation to be conducted in accordance with law and under the supervision of the Board of Directors of said Commercial National Bank.

IV.

That said Commercial National Bank until the final liquidation of its affairs and final settlement with its shareholders, agrees to maintain its corporate existence, and that its Directors and officers will at all times when called upon so to do by said American National Bank execute and deliver in the name of said Association all other and further writings of all kinds which may be necessary to fully effectuate the transfer of said assets, the liquidation of said Association, and this contract.

V.

That in consideration of the foregoing acts and agreements by the Commercial National Bank, said American National Bank hereby agrees that it will, and it does hereby, assume, and promises to pay the same when and as the same are presented for payment, the depositors and other liabilities of said Commercial National Bank of Macon shown in Exhibit "A" hereto attached; and that in addition thereto it will and does hereby assume the redemption of the circulating notes of said Commercial National Bank; and that it will procure such resolution to be passed by its Board of Directors as may be necessary for it to assume the redemption of said circulating notes.

VI.

That said American National Bank will accept the appointment as liquidating agent of said Commercial National Bank, and will proceed with all due and reasonable diligence to liquidate said Association and to collect and reduce to cash all the assets of said Association, all of said assets to be held as security by said American National Bank for all advances made by it in paying the depositors and other liabilities of said Commercial National Bank and the actual expenses incurred by said American National Bank in realizing on said assets; and that after deducting from the proceeds of said assets the actual expenses incurred by said American National Bank in liquidating said Association and acting as liquidating agent and in collecting said assets and realizing upon the same, it will apply said proceeds, first, in repaying to itself all amounts advanced by it hereunder, with interest thereon at the rate of

seven (7%) per cent. per annum, next, in discharging the liabilities of said Commercial National Bank which shall not have been paid by advances made by said American National Bank; and that when all of said liabilities have been fully discharged it will account to the shareholders of said Commercial National Bank and from time to time pay over to said shareholders pro rata the surplus remaining in its hands from the proceeds of said assets; said American National Bank to act as such liquidating agent without compensation for its own services.

It being distinctly agreed and understood that in the event the said liquidation should be interrupted or discontinued for any reason beyond the control of said American National Bank, then and in that event said American National Bank shall and does hold all of the assets of said Commercial National Bank as security for the advances which may have been made by it, up to the time such liquidation may be so discontinued.

And it being further distinctly agreed and understood that neither the resolutions of said board of directors of said Associations nor this contract shall relieve the shareholders of the Commercial National Bank from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability, for any deficit which may remain after exhausting the other assets of said Association in the payment of its liabilities.

In witness whereof, the parties hereto have caused these presents to be signed and delivered in duplicate by their proper corporate officers, and their corporate

Minnesota State Library,
St. Paul, Minn.

seals to be hereto affixed, this 11th day of August, 1914.

COMMERCIAL NATIONAL BANK OF MACON, GEORGIA.

(Seal of Bank.)

By E. Y. MALLARY, President.

Attest: E. N. LEWIS, Cashier.

AMERICAN NATIONAL BANK OF MACON, GEORGIA.

(Seal of Bank.)

By R. J. TAYLOR, President.

Attest: E. C. SCOTT, Cashier.

22 EXHIBIT "A."

Liabilities of Commercial National Bank of Macon, assumed by American National Bank of Macon.

| | | |
|---|---|---|
| A. | Individual Depositors | $ 271,929.18 |
| B. | Bank Depositors | 169,860.18 |
| C. | Savings Depositors | 75,327.13 |
| D. | Certificates of Deposit | 73,597.24 |
| E. | Certified Checks | 177.50 |
| F. | Cashier's Checks | 5,555.00 |
| G. | Dividend Checks | 477.00 |
| H. | Macon Clearing House | 697.55 |
| I. | U. S. Deposits | 43,888.66 |
| J. | Bank Overdraft | 73,634.74 |
| K. | Bills Payable | 210,000.00 |
| L. | Re-Discounts | 179,589.19 |
| | Total (not including circulation) | $1,104,733.37 |

Filed Dec. 22, 1916.
META ERWIN, Deputy Clerk.

## MOTION BY COMMERCIAL NATIONAL BANK OF MACON AND C. M. ADAMS, ET AL., SHAREHOLDERS THEREIN, TO DISMISS COMPLAINANT'S BILL.

To the Honorable Judge of the United States District Court of the Western Division of the Southern District of Georgia:

Come now the Commercial National Bank of Macon, one of the defendants in the above stated cause, and the following named parties who are shareholders in said bank and also defendants in said cause, to-wit:

C. M. Adams, W. T. Anderson, C. H. Andrew, C. H. Andrew, trustee for Clarence, James and Martha Andrew, Miss Mary Bairman, Mrs. W. M. Bairman, L. H. Burghard, Central Trust Company, Commercial & Savings Bank, Leon S. Dure, Claud Estes, F. H. Hertwig, E. D. Huguenin, E. N. Jelks, J. L. Jessup, A. W. Lane,
J. W. Minter, Cecil Morgan, T. C. Parker, A. J.
23 Sams, Mary Lou Smith, P. D. Todd, W. P. Wheeler, B. A. Wright, J. Freeman Hart, R. G. Rouztahn, Mrs. Ruby Stafford, J. Tom Dent, and before filing their answer herein make this their motion to dismiss the bill of complaint as to these defendants upon the following grounds:

1.

Because the allegations and averments of said bill of complaint, with the exhibits thereto attached and

made a part thereof, are wholly insufficient to set out and constitute any valid cause of action or grounds of relief either at law or in equity as to these defendants, or either of them.

2.

Because there is no equity in said bill as against these defendants or either of them, and under the averments and allegations thereof said complainant is not entitled to the relief prayed against these defendants or either of them.

3.

Because it appears from the allegations of said bill and the exhibits thereto attached and made a part thereof, that the American National Bank is not a creditor of the Commercial National Bank, and that under the allegations of said petition the relation of debtor and creditor does not exist between the said American National Bank and the said Commercial National Bank, and as a matter of law the said complainant is not entitled to a judgment or decree against the shareholders in the Commercial National Bank.

4.

Because it appears from the allegations of said bill and the exhibits thereto attached that the Commercial National Bank was consolidated with the Amer-
24 ican National Bank by the purchase of the assets of said Commercial National Bank by the American National Bank, without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank, and that said consolidation was effected without making provision for the shareholders of the Commercial National

Bank by increasing the capital stock of the American National Bank, the continuing and absorbing association, and that as a matter of law the said consolidation revolves itself into a mere purchase of the business and assets of the Commercial National Bank as a closed Bank, with the duty, liability and obligation on the part of the American National Bank to pay all the liabilities including depositors and other creditors of the said Commercial National Bank, and with the further duty, obligation and liability upon the part of the American National Bank to account to the shareholders of the said Commercial National Bank pro rata for any surplus remaining in its hands from the proceeds of said assets.

5.

Because it appears from the allegations of said bill and the exhibits thereto attached, that all the depositors and creditors of the Commercial National Bank have been paid, and that the payment of all such liabilities to depositors or other creditors was assumed by the said American National Bank and that the said American National Bank under said consolidation as provided by the National Bank Act was the purchaser of the business and assets of the Commercial National Bank, and as a matter of law under the terms of said consolidation did not and could not become a creditor of the said Commercial National Bank, and therefore, as a matter of law no liability rests upon said defendants as shareholders.

6.

Because the American National Bank has obtained no judgment against the Commercial National Bank, and the allegations of said petition considered in connection with said exhibit are wholly

insufficient to set out any cause of action either in law or equity against the Commercial National Bank, it appearing from said allegations that the said Commercial National Bank is not a debtor, as a matter of fact, to the said American National Bank, hence no liability against the shareholders in said Commercial National Bank could exist in favor of the complainant in this cause.

7.

Because there is no equity in said bill, and the assets of the said Commercial National Bank having been purchased by the American National Bank were sold and transferred to said bank and placed in its possession, and complainant's proceeding in equity is wholly unnecessary for the purpose of reaching and applying said assets as a trust in its favor, and no equitable relief exists as a matter of law in favor of the complainant and against the Commercial National Bank or the shareholders therein.

8.

And because it affirmatively appears from the bill that the complainant has no such complaint against any of those defendants as would constitute proper subject matter of a creditor's bill. As the complainant sues for the full amount of the stockholders' liability, if any cause of action exists the complainant would have an adequate and complete remedy at law, though these defendants say the allegations are insufficient to constitute any cause of action either at law or relief in equity.

9.

Because complainant bases its cause of action upon an agreement in writing between the Commercial National

Bank of Macon and the American National Bank of Macon, as shown by Exhibit "A" to the bill; and by the express conditions of said agreement
26 the American National Bank assumes the payment of the depositors and other liabilities of said Commercial National Bank "upon condition that the assets of said Commercial National Bank should be transferred to said American National Bank sufficient in amount and in value in the estimation of the officers of the American National Bank to fully protect and secure said association for any and all amounts, payment of which was assumed under said resolution;" and said written agreement comprising said "Exhibit A" expressly recites that the "conditions in said resolution mentioned have been complied with and the assets of the Commercial National Bank have been delivered to said The American National Bank;" it thus appearing from the face of the pleadings that the transaction between the two banks was a purchase of the assets of the Commercial National Bank and in consideration thereof the payment by the American National Bank of all debts of the Commercial National Bank; the same written agreement further expressly showing that the conditions of said purchase and sale have been fully complied with, thus completing contract and creating no relation of debtor and creditor but that of vendor and purchaser.

10.

Because insofar as the bill attempts to assert against the shareholders the liability, the bill is defective, because under the individual liability clause of the National Bank Act the shareholders are individually responsible for contracts, debts, and engagements of the association, which is a statutory liability fixed by law in

favor of creditors and depositors and is not an asset of the bank in which they are shareholders, and hence not an asset which could be the subject matter of barter and sale, and further, is not an asset which could be passed under any transfer to a purchaser of the assets of the bank or to anyone else, and certainly is one that did not pass under articles of agremeent for
27 the liquidation of the Commercial National Bank and the consolidation thereof with the American National Bank.

11.

Because it affirmatively appears upon the face of the said bill and exhibits thereto attached, that the complainant bought the business and assets of the Commercial National Bank, and assumed the payment of its debts and liabilities, and no right in law or equity exists in favor of the said complainant for the ascertainment or value alleged uncollected assets transferred and sold to the complainant, or for any accounting between the complainant and the Commercial National Bank and the shareholders therein, and the complainant is not entitled in law or equity to the relief prayed in its said petition.

12.

Because in construing "Exhibit A" as a whole no relation of debtor and creditor was created thereby.

Wherefore, these defendants pray that these grounds of motion to dismiss complainant's bill be inquired of by the Court, and that said bill be dismissed as to these

defendants, with cost against the complainant in this behalf most unjustly expended.

JORDAN & LANE,
HALL & GRICE,
Solicitors for C. M. Adams, W. T. Anderson, C. H. Andrew, C. H. Andrew, Trustee for Clarence, James and Martha Andrew, Miss Mary Bierman, Mrs. W. M. Bairman, L. H. Burghard, Central Trust Company, Commercial & Savings Bank, Leon S. Dure, Claude Estes, F. H. Hertwig, E. D. Huguenin, E. N. Jelks, J. L. Jessup, A. W. Lane, J. W. Minter, Cecil Morgan, T. C. Parker, A. J. Sams, Mary Lou Smith, J. Freeman Hart, P. D. Todd, W. P. Wheeler, B. A. Wright, Mrs. Ruby Stafford, J. Tom Dent.

A. W. LANE,
WARREN GRICE,
Of Counsel for Defendants above named.

Filed January 13, 1916.

L. M. ERWIN, Clerk.

28 MOTION of OSCAR BRADLEY ET AL., TO DISMISS BILL.

To the Honorable Judges of the District Court of the United States for the Western Division of the Southern District of Georgia:

And now comes Oscar Bradley, W. J. Beeland, L. O. Benton, L. O. Benton & Brother, Arthur L. Dasher, R. L. Davis, J. Marion Dunwody, Kenneth W. Dunwody, W. H. Hightower, R. E. Hightower, J. C. Hinton, Evelyn W. Hubbell, G. W. Hubbell, Macon Cooperage Co., E. A. Middlebrooks, Mrs. Bessie N. Proudfit, Extrx. of A. Proudfit, deceased; F. C. Ries, W. A. Roush, W. A. Roush, agt., Ed. A. Sheridan, Mrs. Lizzie M. Shorter, R. L. Smith, W. D. Wells, W. E. Wilburn, A. H. Birdsey, W. A. Little, W. T. Myers, W. A. Daniel, Mary Virginia Daniel, within twenty days from the time they were served with a copy of the Bill in Equity in the above entitled cause, and as provided in the Rules in Equity in said Court, and before filing their answer thereto make this their motion dismiss the said bill of complaint; and for grounds and reasons why the same should be dismissed, say:

That said bill should be dismissed upon the grounds, and for the following reasons, to-wit:

1.

Because there is no equity in the bill, and because under the allegations therein set out, whatever claim or demand complainant has against these defendants can only be enforced in a Court at Law.

2.

Because under the allegations in the Bill the Complainant is seeking to recover from the defendants, shareholders in the Commercial National Bank to the extent of the full amount of stock held by them at the par value thereof, and not a pro rata portion—and does not pray for any special relief; and, therefore, said com-
29 plainant has no right to proceed in a Court of Equity, but must bring its suit in a Court at Law—to enforce against said shareholders any liability as such shareholders, which remedy at law is full, adequate and complete.

3.

Because the allegations therein show that the plaintiff bank is not a creditor of the defendant, and for this reason is in no event authorized to institute said action.

4.

Because the allegations show that a Court of Equity has no jurisdiction to entertain said suit, or grant the relief prayed for therein.

5.

Because if the plaintiff has any right of action at all against these defendants it has an adequate and complete remedy at law.

6.

Because a Court of Equity neither can nor will entertain a suit to subject these defendants as share-

holders of the defendant Bank on their individual liability as such; unless it appears that the plaintiff Bank has a legal claim against the defendant Bank which it can enforce, and upon which it would be entitled to a judgment at law.

7.

Because a Court of Equity neither can nor will entertain a suit to subject these defendants as shareholders of the defendant Bank on their individual liability unitl the liability of the defendant Bank, is determined and fixed, and the liability of each and every one of the defendants is likewise determined and fixed in the manner prescribed by law, which the allegations to the petition show has not been done.

8.

Because its allegations show that by the terms of the agreement entered into between the plaintiff and defendant Banks on the 1st day of August, 1914 the former became the purchaser and absolute owner in fee of all the assets of every description of the latter Bank of the sole consideration of its assuming and paying off all the liabilities of the latter bank, which agreement was entered into on said day after a full and careful examination and consideration by the officers and Board of Directors of the assets of the defendant Bank and their value with respect to the amount of liabilities, which the plaintiff Bank agreed to assume, and under the terms of and upon the completion of said sale and purchase the assets of the defendant Bank were delivered in to the plaintiff Bank which took possession on August 3rd. of the Banking House of the defendant Bank with all of its books, notes, fixtures,

and properties, real and personal, of every description, and that as a result of said agreement and its consummation by delivery and possession, as hereinbefore set out, the liabilities of the defendant Bank were then extinguished as a matter of law, and its shareholders were relieved from any and all individual liability under the act establishing National Banks, and in no event can the plaintiff Bank which assumed to pay off all of the said liabilities of the defendant Bank recover from these defendants as shareholders in deficit alleged in said bill to have resulted from a failure to realize a sufficient amount from the assets of the defendant Bank with which to pay off the liabilities the said plaintiff Bank had solemnly assumed under this contract.

9.

Because the individual liability of the shareholders of a National Bank is created by statute and can
31 only be preserved in the manner and form prescribed by the statute when the said Banks are liquidated either by voluntary or involuntary liquidation, and said right can only exist and after liquidation continue to exist by virtue of the law creating it, and cannot be either preserved or transferred by a resolution or a contract of the Board of Directors or Shareholders, and therefore, the Plaintiff Bank had acquired no power or authority to exercise its right of individual liability against the shareholders of the Defendant Bank under and by virtue of the terms of the contract attached as an exhibit to the petition.

10.

Because under the allegations of the petition the right to enforce the individual liability clause of the act es-

tablishing National Banks against these defendants, was extinguished by the assumption by the Plaintiff Bank of the liability of the Defendant Bank as a matter of law, by the express terms of the contract; and not only by the express terms of the contract, but for the further reason that the liquidation of the Defendant Bank by consolidation with the Plaintiff Bank, under the terms of said Act, extinguished the latter Bank, and it became one of the former, and therefore, neither it nor its shareholders could become the debtor of the former Bank, by reason of their former relation to the Defendant Bank.

11.

Because it is apparent from the last clause of the contract attached as an exhibit to the petition that the Board of Directors of the Plaintiff and Defendant Banks recognized that by the liquidation of the Defendant Bank by consolidating with the Plaintiff Bank the liability of the shareholders of the defendant bank was extinguished, and by the terms of said last clause said parties undertook to preserve the same and transfer it to the plaintiff Bank to protect it against any deficit arising from a depreciation of the assets of the Defendant Bank, but there movants insist that said right to subject the shareholders to an in-
32 dividual liability does exist and can only exist under the terms and in the manner prescribed by the statute creating it, and cannot be preserved by any contract between the respective Banks or their officers, and said agreement, therefore, so far as these Defendants are concerned is absolutely null and void.

12.

Because the individual liability of the shareholders of a National Bank, as created by the National Banking Act, is not an asset of the Bank, which can be transferred or assigned or conveyed, but it [is] a right given by statute to the creditors of such bank and to be enforced by the creditors in appropriate proceedings against the stockholders; and under the allegations set out in said Bill and the exhibits thereto attached and made a part thereof; the said complainant is not a creditor of the Commercial National Bank, such as entitled it the American National Bank to bring suit, either at law or in Equity, to enforce against these defendants, shareholders in the Commercial National Bank, any individual liability for the shares of stock held by them; and therefore said American National Bank is not entitled to have a judgment or decree against these defendants, shareholders of the stock of said Commercial Bank.

13.

Because under the allegations of the Bill and the exhibits attached thereto and made a part thereof the method and manner pursued by the said Commercial National Bank, by which it is alleged that all the assets of every kind and character, including cash on hand, bills receivable, stocks, bonds, and securities, banking house, and other real estate, and all other assets, were transferred and assigned and conveyed to said American National Bank, and by which the said Commercial National Bank was placed in voluntary liqui-
33 dation, and consolidated with the American National Bank, was illegal as contained in sections

5220 and 5221 of the Revised Statutes of the United States, the vote of shareholders owning two-thirds of said Commercial National Bank, not having been had when and prior to the time when in fact the assets of said Commercial National Bank were transferred and assigned to said American National Bank, and when the said Commercial National Bank placed itself in voluntary liquidation.

14.

Because it does not appear from the allegations in said Bill, that the liability of the Commercial National Bank, if any existed, to said Complainant, has ever been fixed or determined in any manner by the judgment of a Court of competent jurisdiction by the comptroller of the currency, or by any agreement of the Commercial National Bank, the only allegation on that subject, is contained in the 10th paragraph of said Bill, wherein Complainant or its solicitors undertake to fix this liability by mere allegation of their opinion that the assets will not realize a sufficient sum to reduce plaintiffs alleged debt below three hundred thousand dollars, the full amount of the capital stock of the Commercial National Bank, and Defendants say before said Complainant can be entitled, even as a creditor to bring a suit to enforce against the shareholders of the American National Bank liability on their stock, the amount of the indebtedness of said Commercial National Bank must be fixed and determined in the manner pointed out by law; and the assets of said Commercial National Bank be exhausted; and as this does not appear from the allegations in the Bill to have been done, Complainant is not entitled to sue these Defendants.

34

15.

Because it does not appear from any of the allegations in the Bill that the Comptroller of the Currency whose duty it is under the National Banking Act, so to do, has determined that an assessment upon the stockholders of said Commercial National Bank. is necessary in order to pay the debts of said bank, and defendants maintain that before any suit can be instituted and maintained against them, the Comptroller of the Currency must first determine that an assessment upon them as such stockholders, is necessary, in order to pay the debts of said Commercial National Bank; and, that this determination by the Comptroller of the Currency, is a condition precedent to the institution of this suit.

16.

Because it does not appear that the said complainant has by any proper proceeding in a Court of competent jurisdiction obtained a judgment against the defendant, the Commercial National Bank, as its creditor, not [nor] had the liability of said Commercial National Bank to it fixed and determined, and the amount thereof determined so as to fix the amount of the liability of these respondents, as its shareholders, whether a pro rata part, the whole or any part of their stock; nor does it appear from the allegations that any Court of competent jurisdiction has determined that an assessment upon these defendants as shareholders, is necessary in order to pay the debts of said Commercial National Bank; and Defendants say that unless this has been done, and until it is done, the Complainant has no right of action either at Law or in Equity against these De-

fendants as Shareholders of the Stock of the Commercial National Bank, even though it were a creditor of said Bank.

Wherefore, the premises considered, these defendants pray that these, grounds of their motion to dismiss complainants Bill be inquired into and considered by the Court; and that the Court adjudge and direct that said Bill be dismissed as to them, with their costs of Court against the Complainants:

35 And this their Motion may be taken as joint and several Motion of these Defendants.

C. L. BARTLETT,
R. L. BERNER,
GREEN F. JOHNSON,
C. M. HUGULEY,
Solicitor for OSCAR BRADLEY,

W. J. BEELAND,
L. O. BENTON,
L. O. BENTON & BROTHER,
ARTHUR L. DASHER,
R. L. DAVIS,
J. MARION DUNWODY,
KENNETH W. DUNWODY,
W. ELLIOTT DUNWODY,
W. E. DUNWODY,
W. H. HIGHTOWER,
R. E. HIGHTOWER,
J. C. HINTON,
EVELYN W. HUBBELL,
G. W. HUBBELL,
MACON COOPERAGE CO.,
E. A. MIDDLEBROOKS,

MRS. BESSIE N. PROUDFIT, Extrx. of
A. PROUDFIT, Deceased
F. C. RIES,
W. A. ROUSH,
W. A. ROUSH, Agent,
ED. A. SHERIDAN,
MRS. LIZZIE M. SHORTER,
R. L. SMITH,
W. D. WELLS,
W. E. WILBURN,
A. H. BIRDSEY,
W. A. LITTLE,
W. T. MYERS,
W. A. DANIEL,
MARY VIRGINIA DANIEL.

Filed January 15, 1917.
L. M. ERWIN, Deputy Clerk.

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36 MOTION BY J. F. LEWIS, MRS. LAMAR LEWIS OGLESBY, AND MRS. J. E. SPRINGER, NOW MRS. CHAS. THOMPSON, TO DISMISS COMPLAINANT'S BILL.

To the Honorable Judge of the United States District Court for the Western Division of the Southern District of Georgia:

Comes now J. F. Lewis, Mrs. Lamar Lewis Oglesby, and Mrs. J. E. Springer, now Mrs. Chas. Thompson, three of the respondents in the above cause,
37 and before filing their answer herein, makes this their motion to dismiss the above Bill of

Complaint as to these respondents upon the following grounds:

1. Because the allegations and averments of said Bill of Complaint are wholly insufficient to set up and constitute any valid, or legal cause of action in equity against these respondents, or either of them.

2. Because there is no equity in said bill against these respondents, and under the averments and allegations thereof, complainant is not entitled to relief prayed against these respondents, or either of them.

3. Because it appears upon the face of said bill that complainant's cause of action, if any exist in his favor, as a statutory suit, or action of common law to enforce at common law the statutory remedy at law, and not in a Court equity.

4. Because complainant's bill fails to show, or set out in detail, or particularly any debt owing to, or due to complainant by The Commercial National Bank of Macon; that there is no indebtedness, or debt set up, or shown in complainant's cause of action.

5. Because complainant cannot in law or equity, recover against these respondents by the mere alleging that complainant is a creditor of The Commercial National Bank in the sum of $320,102.82, besides interest on said sum, and institute suit without setting up and showing in their said petition what constitutes the sum; what evidence of debt upon same is claimed; and without specifically setting up and showing in detail all the evidence of debt claimed against The Commercial National Bank of Macon.

6. Because the contract set out in complainant's bill, which at or, any specific averment of any special note or asset of The Commercial Bank that is insolvent or worthless; and shows no specific deficit of the assets of The Commercial National Bank.

38 Wherefore, these respondents pray that said paragraph two be stricken.

(2) The allegations of paragraph nine seeks to show an indebtedness of $320,102.82 against the American National Bank, setting up no itemized statement of what assets of The Commercial National Bank are insolvent, the amount and date of same; and does not put these respondents, or any other respondent, upon any notice whatever as to what claims they contend are insolvent and worthless, in order to disprove same, and fails utterly to put these respondents on any notice whatever what particular amount of assets of The Commercial National Bank are claimed insolvent.

Wherefore, these respondents pray that said paragraph nine be stricken.

(3) The allegations of paragraph six are insufficient to charge any liability against these respondents; said paragraph fails to show specifically, or give an itemized statement of what assets of said bank are remaining uncollected; and disposed of; the amount of same; the date of same, or, the maker of same. Complainant utterly failing to show under the law, claim of liability for the said amount.

Wherefore, these respondents pray that said paragraph six be stricken.

(4) The allegations contained in paragraph thirteen are insufficient in law to charge any liability against these respondents, or either of them. That the remaining assets of The Commercial National Bank are now out of the possession, custody, or control of The Commercial National Bank, and it is the duty of complainant under law, to set up and show same in their suit what same are. In order to hold any liability against these respondents, complainant must specify what the remaining assets are, and the nature of same, the amounts of same, in order that these respondents may have notice of same.

39 Wherefore, these respondents pray that said paragraph thirteen be stricken.

(5) That the allegations of paragraph eighteen are insufficient in law to charge any liability against these respondents; said paragraph attempts to show an indebtedness of The Commercial National Bank of Macon to complainant, fails to set up, or show any obligation whatever on the part of The Commercial National Bank to be responsible to complainant, or liable for any deficit in the assets turned over to the complainant by The Commercial National Bank of Macon.

7. That said contract, at the time of the turning over of the assets to the Complainant, shows that it was a purchase of the assets of The Commercial National Bank by the Complainant, and was the consolidation of the assets of Complainant and the Commercial National Bank by purchase of its assets; said contract so distinctly stating and showing; and under said consolidation and purchase of the assets, there can be no liability against these defendants, or either of them.

8. Because the agreement under which Complainant took over the assets of The Commercial National Bank shows that it was the purpose, intention, scheme and plan, on account of the benefits to be derived from securing the deposit accounts of The Commercial National Bank, that the assets of the two banks should be consolidated, and the Complainant purchased said assets of The Commercial National Bank, and under said agreement there is no legal liability against The Commercial National Bank of any deficit, its shareholders, these respondents, or either of them.

9. These respondents, and each of them, adopt as their own, each and every demurrer, or motion to dismiss Complainant's bill filed by any shareholder in this cause showing any legal reason why complainant's bill should not be dismissed, and will insist on same, and adopt same as their own.

Whereupon, these respondents prays a judgment of the Court upon these grounds of their motion to dismiss said bill, and as to whether these respondents should make other and further answer to the bill of Complainant's in said cause.

10. In this, the said motion to dismiss said bill, these respondents move to strike certain paragraphs of said bill hereinafter referred to, as follows:

(1) Allegations of paragraph two is insufficient to charge any liability against these respondents, there being shown no itemized statement of indebtedness, or what assets of The Commercial National Bank are worthless; and no itemized statement of any liability claimed; fails to show what amount of assets have been collected

and applied to the amount paid out by the American National Bank; and fails to set out specifically what assets are remaining; but, only states in a general way that it is estimated. That estimated amounts are insufficient to put these respondents on notice as to how to determine values and answer same.

Wherefore, these respondents pray that said paragraph eighteen be stricken.

Whereupon, these respondents pray that this their motion to dismiss Complainant's bill, and the several paragraphs thereto required by the Court, and that said bill be dismissed as to these respondents with cost against Complainant in said cause.

W. A. DODSON,
Solicitor for J. F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. Chas. Thompson.

Filed January 13, 1917.
META ERWIN, Deputy Clerk.

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41 MOTION TO DISMISS BY ATLANTIC NATIONAL FIRE INSURANCE CO.

Now comes one of the defendants in the above stated cause, to-wit: the Atlantic National Fire Insurance Company, and within twenty days from the date of service on said defendant, and before making answer to the allegations of the several paragraphs of the plaintiff's petition in said cause shows to the Court that plaintiff ought not to have and maintain its action against this

defendant for certain reasons appearing on the face of the bill, filed in said cause, as shall hereinafter be made more fully to appear, to-wit:

I.

Because no equitable cause of action is set out in said bill; it appearing from said bill that the action brought by said complainants against the defendants named therein is for the full amount of the alleged statutory liability of the several shareholders of the Commercial National Bank of Macon, one of the defendants in said cause, and that the complainants have a complete and adequate remedy at law therefor.

42

II.

Because equity has no jurisdiction of the matters and things set out in said petition, but the same are cognizable and enforceable, if at all, only in a Court of Law.

III.

Because no cause of action, either legal or equitable, is set out in said bill on behalf of said complainant against this defendant:

(a) In that it does not appear from said bill that said complainant is a creditor of the Commercial National Bank of Macon, or that it occupies any other such relation to said Commercial National Bank of Macon as would authorize it to maintain a suit for the statutory liability of the shareholders of said Commercial National Bank of Macon for its debts, contracts or engagements.

(b) In that it does not appear from said bill that the matter of the necessity of the amount of such assessment, if any, against the shareholders of said Commercial National Bank of Macon has ever been submitted to or passed upon the Comptroller of the Currency of the U. S. A. before the filing of said bill and as a prerequisite to the filing thereof, as required by law.

IV.

Because it appears from said bill and the agreement attached thereto as "Exhibit A" that the Commercial National Bank of Macon sold and transferred to the plaintiff all of its assets and its business, in consideration of the assumption of all of its liabilities by said plaintiff, and hence if said plaintiff paid liabilities in excess of the amount realized from said assets as alleged, it was but performing its own obligation under the terms of said agreement, and such payment does not and cannot constitute a contract, debt or engage-
43 ment of said Commercial National Bank, for which the shareholders of said Bank are, in law, liable.

V.

Because it appears from said bill that said plaintiff has in its hands, undisposed of and unapplied, assets of said Commercial National Bank, the value of which is uncertain and hence the amount of the liability of the defendant shareholders is uncertain; and this defendant contends that said assets should have been exhausted or their exact value ascertained and applied as a prerequisite to the institution of said bill.

VI.

Because it appears from said bill that there are or may be still outstanding, unsatisfied, debts of liabilities of said Commercial National Bank, the payment of which were assumed, by said plaintiff under and by virtue of the agreement, aforesaid, and that hence said plaintiff has not fully performed its own obligations, under said agreement, and cannot be heard to demand the enforcement of obligations alleged to arise thereunder, against the other party thereto, or its shareholders.

VII.

Because it does not appear that the terms and provisions of the Acts of Congress, relating to voluntary liquidation by a National Bank have been complied with and hence there has been no liquidation either partial or complete, under the provisions of said Acts of Congress, and plaintiff is not entitled to avail itself of any of the provisions thereof.

VIII.

Because if the allegations of said bill show any such liquidation or attempted liquidation as was contemplated by the Acts of Congress aforesaid; it shows a liquidation for consolidation only whereby the Commercial National Bank of Macon was merged into and
44 became part of the liabilities of the former and became bound to pay the same and thereby the statutory liability of the shareholders of the former became extinguished and cannot now be enforced at the instance of said plaintiff.

IX.

Because the said Commercial National Bank having been consolidated with and merged into said plaintiff Bank, as aforesaid, and all of its debts, contracts and engagements assumed by said plaintiff Bank, the individual liability of the shareholders of said Commercial National Bank, provided for by the Acts of Congress, ceased to exist and the same was not, and could not be preserved to said plaintiff Bank by a mere provision in the agreement between said Commercial National Bank and said plaintiff that it was not intended thereby to relieve said shareholders from their "legal liability as shareholders to respond for any deficit which may remain after exhausting the other assets of said association in the payment of its liabilities or by any other provision of similar purpose or intent that may be contained in said agreement.

X.

And this defendant shows further specially that paragraph 12 of said bill, which reads as follows:

"12: By the provisions of the Acts of Congress, known as the National Banking Act, under which said bank was incorporated and organized, the shareholders are "individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of such association to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares."

is irrelevant, immaterial and is bad pleading and therefore ought to be stricken, for the reason that it relates

wholly to an allegated statement of and a quotation from the Acts of Congress touching the individual
45 liability of shareholders in a National Banking Association, of which the Court will take judicial cognizance, if true, and which is unnecessary and has no place in the pleading.

XI.

And this defendant further shows to the Court that it ought to be required, if any event, to answer the petition in said cause, on the subpoena served on it, because said subpoena, though not issued until the 27th day of December, 1906, requires this defendant to be and appear at the Clerk's Office of the said Court, etc., on the 15th day of January, 1917, to answer, etc., less than twenty (20) days from the day of its issuance.

Wherefore, this defendant moves the Court to dismiss said bill generally and said paragraph 12 and said subpoena specially and that this defendant be discharged hence, with its reasonable costs in this behalf incurred.

B. S. DEAVER;
RYALS & ANDERSON,
Defendant's Attorneys.

Filed Janury 18, 1917.
META ERWIN, Deputy Clerk.

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46 AMENDMENT TO BILL OF COMPLAINT.

Comes now the American National Bank of Macon, plaintiff, and by leave of the Court first had, amends the original bill of complaint in the following particulars, to-wit:

1. By attaching to said bill, marked respectively Exhibits "B" and "C" copies of the resolutions adopted by the Board of Directors of the Commercial National Bank on August 14, 1914, and of the resolutions adopted by the Board of Directors of the plaintiff on the same day, which resolutions are referred to in the third paragraph of the original bill and are also in part recited in the preamble to the articles of agreement which are attached as Exhibit "A" to the bill, and plaintiff prays reference to said exhibits as often as may be necessary.

47 2. By the terms of the resolution of the Commercial National Bank set forth in Exhibit "B" said board authorized

"the officers of this association to transfer to the American National Bank of Macon, Georgia, as cash, or as collateral for the notes of this association, including cash, cash items, bill receivable, bonds, real estate and personal property and choses in action, of all kinds."

said resolution vested in the officers and Finance Committee

"full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers and committee,"

and said officers and Committee were further authorized

"to make such contract with said Bank as may be necessary or appropriate."

The plaintiff by the terms of the resolution of its Board of Directors set forth in Exhibit "C" agreed to

assume and pay the liabilities of the said Commercial National Bank

* * *

"upon condiiton that said Association transfer to this Association as cash or as collateral for its notes, cash, cash items, bills receivable, bonds, real estate, and other assets, sufficient in amount and in value in the estimation of the officers of the Association to fully protect and secure this Association for any and all amounts so assumed, or shall otherwise satisfactorily secure this Association for all amounts paid or assumed."

and the officers of the plaintiff were likewise

"given full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers, and said officers are
48 further authorized to make such contract with the Directors of said Association or with such liquidating Agent as may be appointed for said Association."

3. Pursuant to the resolutions set forth in Exhibits "B" and "C" the assets of the Commercial National Bank were transferred to the plaintiff on August 3, 1914, not as cash, but as collateral security for the indebtedness of the said bank to plaintiff incurred in the assumption by the plaintiff of the liabilities of said Bank. Said assets were not purchased by the plaintiff or taken or received by it as cash, but were accepted solely as security for the indebtedness of the said Bank.

4. It was found to be impracticable to take notes, as had been contemplated by the resolutions, for the amounts advanced and being advanced by the plaintiff

in the payment of the liabilities of the Commercial National Bank which it had assumed, and, therefore, it was agreed by the officers and Finance Committee of the said Bank with the officers of the plaintiff that the indebtedness of the said bank should be carried by the plaintiff as an overdraft, and that the overdraft should be secured by the assets which were transferred as collateral security. The plan agreed upon and which was adopted and carried out was for the said bank through its proper officers to draw checks on the plaintiff in settlement with its depositors and in payment of its other liabilities. These checks were cashed by the plaintiff, and were charged to the account of the said Bank, the checks being likewise entered upon the records of the said bank showing the amount of the overdraft of the said bank with the plaintiff. As collections were made on the notes and other receivables belonging to said Bank, the amounts so collected were deposited by the said Bank with the plaintiff and applied to the reduction of the overdraft.

5. For some two weeks after the agreement between said bank and plaintiff, made pursuant to the resolutions set forth in Exhibits "B" and "C", during which
49 time the said bank was paying off its depositors, the said bank continued in active operation, cashing checks drawn on it, receiving deposits from its customers, clearing checks on the other Macon banks through the Macon Clearing House, checking on its deposits with other banks, and transacting other business as an active banking institution, its business being handled through its own officers and clerks. Funds to enable said bank to pay its depositors and meet its other obligations were loaned to it by the plaintiff upon checks drawn by the bank through its proper officers on

the plaintiff, which checks were cashed by plaintiff and charged to the account of said bank in the manner hereinbefore recited. The amount due by the said bank to plaintiff was largely incurred during this period, and was represented by the overdraft aforesaid. After the depositors of the said bank were in large part paid, the said bank continued to draw checks upon the plaintiff in payment of its various liabilities, and these checks were cashed by the plaintiff and charged to the account of the bank.

6. Plaintiff did not purchase or accept as cash any property or assets of the said bank excepting its banking house with the furniture and fixtures therein. By agreement with the Liquidating Committee appointed by the stockholders of the said bank, plaintiff as Liquidating Agent offered the said banking house for sale at public outcry after proper advertisement, but a fair price not being realized at said sale, plaintiff offered to purchase the said building at $40,000.00, said sum to be applied to reducing the indebtedness of the said bank to it, and this proposition was accepted, and the said building was conveyed to plaintiff by the officers of the said bank. Plaintiff attaches hereto a copy of the resolution of the Board of Directors of the said bank authorizing the sale of said building, the price to be credited on the indebtedness of said bank, said resolution being marked Exhibit "D", reference to the same being prayed.

50 7. Plaintiff continued to carry the indebtedness of the said bank to it as an overdraft, charging said bank with all checks of the said bank which it paid, and crediting the said bank with all amounts realized from the collection or sale of its assets

which were deposited against said overdraft. The amount of said overdraft, added thereto interest as provided in the contract, up to the 22nd day of November, 1916, the last date upon which interest was entered, is the sum of $320,102.82. Plaintiff in its published statements and in its reports to the Comptroller of the Currency included the said overdraft among its assets, listing the same under the head of "loans and discounts". The said bank also in its report to the Comptroller of the Currency listed as a liability the amount due by it to the plaintiff under the head of "due American National Bank", the amount so listed being the amount of said overdraft, the said bank making separate reports to the Comptroller of the Currency, its assets and liabilities not being included in the reports made by the plaintiff.

8. Plaintiff amends paragraph seven of the original bill by attaching a copy of the resolution passed by the shareholders of the said bank at the meeting held on September 30, 1914, placing the said bank in voluntary liquidation, said resolution being marked Exhibit "E" and reference to the same being prayed. And plaintiff further amends said paragraph seven by attaching a copy of the resolution passed by said stockholders ratifying the action taken by the Directors as set forth in the resolution hereinbefore referred to and set forth in Exhibit "B" and ratifying the contract attached to the original petition, said resolution being marked Exhibit "F" and reference to the same being prayed.

9. Plaintiff amends said bill by adding thereto the following additional prayer:

That plaintiff may have judgment against the said Commercial National Bank of Macon for $320,102.83,

the amount of the indebtedness of the said
51 bank to it, together with the interest thereon at the contract rate of seven per cent, per annum less whatever amount may be fixed by the decree of the Court as the value of the uncollected and undisposed of assets of said bank still held by the plaintiff as security.

HARDEMAN, JONES, PARK & JOHNSTON,
Solicitors for American National Bank of Macon, plaintiff.

GEO. S. JONES,
ORVILLE A. PARK,
Of Counsel.

Georgia, Bibb County.

In person appearing before the undersigned, an officer duly authorized to administer oaths, E. C. Scott, who being duly sworn, deposes and says that he is cashier of the American National Bank of Macon, and he has read the foregoing amendment, and that the facts therein are true.

E. C. SCOTT.

Sworn to and subscribed before me, this 16th day of November, 1917.

R. C. SOUDER,
Notary Public, Bibb Co., Ga.

## EXHIBIT "B".

### Resolution of Commercial National Bank Directors Passed on August 1st, 1914.

Resolved, that in the opinion of the Board of Directors of this association it is expedient for this association to go into voluntary liquidation under Sections 5220 and 5223 of the United States Revised Statutes, and that the officers of this association be and they are hereby directed to proceed under the bylaws to call
52 a meeting of its stockholders to consider this question and the consolidation of this association with the American National Bank of Macon, Georgia, by the sale of its assets to the said bank.

Resolved further, that the exigencies of the situation are such that in contemplation of the liquidation of this association as aforesaid, the Board of Directors of this association hereby authorize the officers of this association to transfer to the American National Bank of Macon, Georgia, as cash, or as collateral for the notes of this association, all of the assets of this association, including cash items, bills receivable, bonds, real estate, and personal property, and choses in action, of all kinds, which said assets are hereby transferred, assigned and delivered to the American National Bank of Macon, Georgia, in order to fully protect and secure said bank for all moneys advanced or to be advanced by that bank under the assumption and payment of its deposits, bills payable, and other liabilities of this association shown by the list of liabilities this day furnished by this association to said bank—said American National Bank of Macon, Georgia, to take over the business of this association and to account to the shareholders of this

association for any overplus which may remain after paying the indebtedness of this association in full and the expenses of realizing on the assets so transferred, said bank to charge nothing for its services in so doing.

The officers and finance committee are hereby given full power and authority to carry out the general purpose of this resolution, and the details to be left to the discretion of said officers and committee, and the said officers and committee are further authorized to make such contracts with said bank as may be necessary or appropriate hereunder.

53 EXHIBIT "C".

Resolution Adopted by Board of Directors of American National Bank, August 1, 1914.

Resolved, that this association assume the payment of the deposits, bills payable, and other liabilities of The Commercial National Bank of Macon, shown by the list of liabilities furnished by said bank to this bank, and agree to pay the same when and as the same are presented for payment, upon condition that said association transfer to this association as cash or collateral for its notes, cash, cash items, bills receivable, bonds, real estate, and other assets, sufficient in amount and in value in the estimation of the officers of this association to fully protect and secure this association for any and all amounts so assumed, or shall otherwise satisfactorily secure this association for all amounts paid or assumed; this association to take over the business of said association in the manner aforesaid, accounting to the shareholders of said association for any overplus which may remain after paying the indebtedness of said association

in full, and the expenses of realizing on the assets transferred to this association as aforesaid; this association to charge nothing for its service in so doing. The officers of this association are hereby given full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers, and said officers are further authorized to make such contract with the directors of said association or with such liquidating agent as may be appointed for said association, provided, however, that this resolution shall not become effective until the other bank of the Macon Clearing House Association shall, by proper resolutions agree to supply, in proportion to their respective capital and surplus, their proportionate share of cash and exchange that may be necessary to meet withdrawals by depositors not immediately re-deposited in this association, and other cash demands to which this association may be required to respond. Provided, further, that in the event the officers of this asso-
54 ciation shall, upon a further investigation of the affairs of The Commercial National Bank, deem it unsafe to proceed under this resolution, they shall not do so.

## EXHIBIT "D".

Resolution of Commercial National Bank Directors Adopted on July 1, 1916.

Resolved, that the offer of the American National Bank of Macon, as contained in the letter from R. J. Taylor, President, to E. Y. Mallary, President Commercial National Bank, dated July 1, 1916, which said letter has been submitted and read at this meeting, to purchase

the Commercial Bank Building, including the vault, safety deposit boxes, bank and other fixtures, and furniture, at and for the sum of Forty Thousand Dollars ($40,000.00); to be credited on the indebtedness of the Commercial National Bank to the American National Bank, be and the same is hereby accepted, and the president or vice-president and cashier of this bank are hereby authorized and directed to execute on behalf of this bank and under its seal good and sufficient conveyance of the property to the said American National Bank.

## EXHIBIT "E".

### Resolution of Shareholders of Commercial National Bank, Adopted September 30th, 1914.

Resolved, that the Commercial National Bank be placed in voluntary liquidation under the provisions of Sections 5220 and 5221 of the United States Revised Statutes, to take effect upon this date, and that the American National Bank of Macon, Georgia, be appointed liquidating agent of said bank; that liquidation shall be conducted in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by the agent in
55 an amount to be fixed by the board of directors; that the said liquidating agent shall render quarterly reports to the Comptroller of the Currency on the 1st of January, April, July and October of each year showing the progress of said liquidation until said liquidation is completed; that said liquidating agent or committee shall render an annual report to the shareholders on the date fixed in the articles of association for said annual meeting, at which meeting the share-

holders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank, and at said meeting the shareholders may, by a vote of the majority of the stock, remove the liquidating agent; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied and that the National Bank Examiner will be compensated for his time and expense in making the examination in question.

## EXHIBIT "F".

### Resolution of the Stockholders of Commercial National Bank Passed September 30, 1914.

Whereas, the Board of Directors of this Association by resolution adopted on August 1, 1914, transferred and assigned to the American National Bank of Macon all of the assets of this Association as security for the liabilities of this Association which were assumed by the said American National Bank, said resolution being passed in contemplation of the voluntary liquidation of this Association under the provisions of Sections 5220 and 5221 of United States Revised Statutes; and,

Whereas, on August 11, 1914, a contract between this Association and the said American National Bank, signed by the respective officers of said association, was duly entered into, said contract being made pursuant to the resolution of the Board of Directors aforesaid; and

Whereas, on August 12, 1914, a special meeting of the shareholders of this Association was held at the banking house of the Association in the City of Macon, at which meeting stockholders representing 2616 shares were present in person and by proxy, at which said meeting a resolution was unanimously passed, ratifying and approving the action of the Board of Directors in transferring the assets of this Association to the American National Bank as aforesaid, and ratifying and approving the contract between the two associations dated August 11, 1914.

And whereas said meeting of stockholders was not called and held in accordance with the articles of association in that only ten days notice of said meeting was given instead of thirty days, as required by said articles of association; and

Whereas, this meeting of stockholders has been called in accordance with the articles of association and after thirty days notice as provided in said articles of Association, for the purpose of ratifying the action of the previous meeting and of taking appropriate action looking to the voluntary liquidation of this Association;

Therefore, resolved: That the action of the Board of Directors of this Association as contained and set forth in the resolution adopted by said Board on August 1st, 1914, transferring and assigning the assets of this Association to the American National Bank of Macon, said resolution appearing on the minutes of said Board of Directors on August 1st, 1914, be and the same is hereby in all respects ratified and approved by the shareholders of this Association;

57 Resolved further, that the contract between this Association and the American National Bank of Macon, signed by their respective officers and dated August 11th, 1914, said contract having been made pursuant to the resolution of the Board of Directors aforesaid, be and the same is hereby in all respects ratified and approved:

Resolved further, that the action of the special meeting of stockholders, approving said resolution of the Board of Directors and the contract aforesaid and providing for the voluntary liquidation of this Association, under Sections 5220 and 5221 of the United States Statutes, be and the same is hereby in all respects ratified and approved.

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ORDER ALLOWING AMENDMENT.

In Open Court, November 28, 1917.

After argument heard, the foregoing amendment is allowed subject to pending motions to dismiss the bill of complainant and further subject to any subsequent motions to dismiss the bill as amended which may be filed.

BEVERLY D. EVANS,
U. S. Judge.

Filed November 16, 1917.

IRENE ELKINS,
Deputy Clerk.

## MOTION TO DISMISS THE BILL AS AMENDED.

And now come the following defendants, to-wit: C. M. Adams, C. H. Andrew, C. H. Andrew, as trustee for Clarence, James and Martha Andrew, L. H. Birghard, Commercial and Savings Bank, Claud Estes, E. D. Huguenin, J. L. Jessup, J. W. Minter, T. C. Parker, Mary Lou Smith, W. P. Wheeler, Mrs. Ruby Stafford, J. Freeman Hart, W. T. Anderson, Miss Mary
58 Bierman, Mrs. M. M. Bierman, Central Trust Co., Leon S. Dure, T. H. Hertwig, E. N. Jelks, A. W. Lane, Cecil Morgan, A. J. Sams, P. D. Todd, B. A. Wright, R. G. Routzahn, who have heretofore filed their motion to dismiss said bill upon various grounds therein stated, which said motion was duly heard and argued on October 5th and 6th, 1917; whereupon the Court after considering the same did, on November 8th, 1917, render an opinion and decision sustaining said motion and directing that an order and decree be presented and signed in conformity to said opinion and decision, and said complainant having on the 30th day of November, 1917, presented to the Court an amendment to its said bill, which amendment was allowed by the Court and ordered filed;

And these defendants thereupon now move the Court to dismiss said bill as amended as to them on each and every ground stated in their original motion to dismiss, and say that the bill should, for the reasons stated in said motion, be dismissed as to them;

And they here and now to the bill as amended renew their motion to dismiss as to them, because said amendment does not set up any new or additional reason either in law or equity why the complainant should recover of these defendants, and they further say that said bill now as amended fails to show any ground or reason why

said complainant should recover of these defendants; but on the contrary, the bill as amended discloses reasons why. complainant is not entitled to recover.

JORDAN & LANE,
HALL & GRICE,
Attorneys for defendants above named.

J. E. HALL,
WARREN GRICE,
Of Counsel.

Filed Nov. 29, 1917.

L. M. ERWIN,
Clerk.

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59 MOTION TO DISMISS THE BILL AS AMENDED.

And now come the defendants, Oscar Bardley, W. J. Beeland, L. O. Benton, L. O. Benton & Brother, Arthur L. Dasher, R. L. Davis, J. Marion Dunwody, Kenneth W. Dunwody, W. Elliot Dunwody, W. H. Hightower, R. E. Hightower, J. C. Hinton, Evelyn W. Hubbel, Geo. W. Hubbel, Macon Cooperage Company, E. A. Middlebrooks, Mrs. Bessie N. Proudfit, executrix of the will of A. Proudfit, deceased, F. C. Ries, W. A. Roush, W. A. Roush, agent, E. A. Sheridan, Mrs. Lizzie M. Shorter,
R. L. Smith, A. H. Birdsey, W. D. Wells, W. E.
60 Winburn, W. A. Little, W. T. Myers, W. A. Daniel, Mary Virginia Daniel, L. O. Benton,

for Southern Securities and Financing Company, J. W. Payne, and Mrs. Etta Isabel Pace, who have filed their motion to dismiss said bill upon various grounds therein stated, which said motions were duly heard and argued on October 5th and 6th, 1917, when after signing the same, the Court, on November 8th, 1917, rendered a decision sustaining said motion, and directing an order and decree be presented and signed in conformity to said opinion and decision;

And said plaintiff having, on the 28th day of November, 1917, presented to the Court an amendment to said bill, which amendment was allowed by the Court and ordered to be filed.

And these defendants thereupon now move the Court to dismiss the said bill as amended as to them on each and all the grounds stated in their original motion to dismiss, and say that said bill for the reasons stated in said motions should be dismissed.

And they renew the same here and now, because they allege and show that said amendment does not set up any new or additional reason at law or equity why the plaintiff should recover of these defendants; and that said bill as now amended fails to show any legal or equitable grounds or reason why said plaintiff should recover of these defendants.

C. L. BARTLETT,
R. L. BERNER,
GREENE F. JOHNSON,
Attorneys for the defendants above named.

61 OPINION.

EVANS, District Judge.

The American National Bank exhibits its bill against the stockholders of the Commercial National Bank in behalf of itself and other creditors, if any, of the Commercial Bank. The Commercial Bank is not sued, and the action against its stockholders is founded on Act of Congress June, 30, 1876, c. 156, Rev. Stat. No. 5151 (U. S. Comp. Stat. 1916, No. 9807) giving Federal Courts original jurisdiction in equity of a creditors bill against stockholders of a national bank. The primary and controlling question is the relation between
62 the two banks resulting from their contract for the liquidation of the Commercial by the American. The action is not maintainable unless that contract and what was done under it make the American National Bank the creditor of the Commercial National Bank.

The contract recites that it was entered into by banks to carry out the purposes of the resolutions of the directors of the respective banks, and the subject matter and terms of those resolutions necessarily must control the interpretation of the contract executed in pursuance of them. The resolution of the directors of the Commercial National Bank authorized (1) the officers of that bank to commence proceedings for its liquidation and for consolidation with the American National Bank; (2) (in pursuance of such purpose) to transfer to the American National Bank all of the assets of the Commercial; (3) which assets were transferred by the resolution to fully protect and secure the American for all moneys advanced or to be advanced in the payment of the liability of the Commercial; (4) the resolutions contemplated in consideration of the foregoing that the

An ican (a) should take over the business of the Commercial, (b) liquidate its assets, (c) account to the shareholders of the Commercial for any excess of proceeds of assets over liabilities without charge for its services. The resolution of the directors of the American is the complement of that of the Commercial. The American National Bank by resolution of its creditors, assumed the liabilities of the Commercial National on condition (1) that the assets of the Commercial transferred be sufficient in amount and in value "in the estimation of the officers of the American National Bank" to fully protect and secure the American for all payments made of the debts of the Commercial which it assumed.

It appears to me, from these resolutions, that the directors of the Commercial bank realized that it was the course of prudence to liquidate its business through the medium of the American bank by a transfer of all its assets which were deemed by them to be of greater value than the amount of its liabilities. The
63 directors of the American were willing for that bank to become the liquidating agent, and to assume the payment of the debt of the Commercial, on condition that the directors of the American estimated such assets to be sufficient to pay all the debts of the Commercial. If the directors of the American deemed the assets of the Commercial sufficient for that purpose, the American was to take over the business of the Commercial, all of its assets by transfer and to assume all of its debts, and advance the necessary money to pay these debts, and reimburse itself out of the funds realized from the assets of the Commercial and pay over the excess, if any, to the stockholders of the Commercial without charge for its services. This seems to me to

have been the plain intent of the parties in making this contract.

The structure of the resolutions reflect the attitude of the respective boards of directors. The directors of the Commercial felt that though the exigency was such that the Commercial could not continue as an active banking agency, it was solvent and that the American would be willing to take over its business, pay its debts in advance of realizing on the assets, and account for the excess of assets over liabilities to the stockholders, without compensation for its services in return for the patronage of the customers of the Commercial. The American was willing to accept the offer of the Commercial on condition—not, that the assets of the Commercial actually would be sufficient to reimburse itself for advances to pay the Commercial's liabilities, but on condition that such assets be "sufficient in amount and in value in the estimation of the officers of the American National Bank to fully protect and secure said Association (American) for any and all amounts, payment of which was assumed under said resolution". With this purpose in mind the two banks entered into the contract which we are called on to construe.

I do not suspect that the directors of either bank thought there would be a deficiency in the Commercial's assets. Both banks were located in the same city, and the directors of the American were fully competent to estimate the worth and value of the Commer-
64 cial's paper. The American evinced a desire to enter the transaction if its directors estimated the assets of the Commercial to be sufficient to pay all of its liabilities. The resolutions did not contemplate that the relation of creditor and debtor should exist between the banks, indeed, both sets of resolutions contemplate that the American should take over all

of the assets of the Commercial and all of its business. Nothing was left from which the Commercial could pay anything. Bereft of business and assets, it presented a sorry plight for a debtor who was expected thereafter to pay a substantial sum.

These facts appear from the resolutions. They cannot be disregarded when we come to the interpretation of the contract. As was said by Mr. Justice Clifford in Nash v. Towne, 5 Wall. 689, 699: "Courts, in the construction of contracts, look to the language employed, the subject-matter and the surrounding circumstances. They are never shut from the same light which the parties enjoyed when the contract was executed, and, in view, they are entitled to place themselves in the same situation as the parties who made the contract, so as to view the circumstances as they view them and so to judge the meaning of the words and of the correct application of the language to the things described."

The first paragraph contains words appropriate to a formal transfer of all the assets of the Commercial to the American with warranty of title. The second and third paragraphs contain promises that the Commercial bank will call a meeting of its stockholders, to provide for the liquidation of its affairs, agreeably to No. 5220, 5221 and 5223 of the Revised Statutes and "consolidating same with the American National Bank of Macon by purchase of the assets of said Commercial National Bank by the American National Bank, but without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank." The bill alleges that such meeting of the stockholders of the Commercial was called, and at that meeting a resolution was adopted by a vote of more than
65 two-thirds of the stockholders, placing the Commercial bank in voluntary liquidation; which re-

solution was duly approved by the Comptroller of the Currency. The fourth paragraph contains a covenant that the Commercial will maintain its corporate existence until final liquidation and settlement with its shareholders. This provision is superfluous, as there is no necessity of a contrary to preserve the corporate existence under such circumstances. Cen. Bk. v. Com. Mu. Life Ins. Co., 104 U. S. 54. The fifth paragraph contains the promise of the American to pay the liabilities of the Commercial.

The sixth and last paragraph contains the American's express acceptance of the appointment of liquidating agent, and its promise to proceed with due diligence to collect and reduce to cash all of the Commercial assets. "All of the assets of said Association to be held as security by said American National Bank for all advances made by it in paying the depositors and other liabilities of said Commercial National Bank, and the actual expenses incurred by said American National Bank in realizing on said assets; and that after deducting from the proceeds of said assets the actual expenses incurred by said American National Bank in liquidating said Association and acting as liquidating agent and in collecting said assets and realizing upon same, it will apply the proceeds, first, in repaying to itself all amounts advanced by it hereunder, with interest thereon at the rate of seven (7%) per cent per annum; next, in discharging the liabilities of said Commercial National Bank which shall not have been paid by advances made by said American National Bank; and that when all of said liabilities have been fully discharged, it will fully account to the shareholders of said Commercial National Bank and from time to time pay over to said shareholders pro rata the surplus remaining in its hands from the proceeds of said assets; said American National Bank to act

as such liquidating agent without compensation for its own services." This paragraph also provided that in the event the liquidation should be interrupted for any reason beyond the control of the American National Bank, that the Aremican National Bank "shall and does hold all of the assets of said Commercial National Bank as security for the advances which may have been made by it, up to the time such liquidation may be so discontinued"; and further provided that neither the resolutions of the boards of directors nor the contract shall relieve the shareholders of their legal liability to respond, in the event it may be necessary to have recourse upon such shareholders' liability, for any deficit which may remain after exhausting the other assets of the Commercial in the payment of its liabilities.

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Paragraphs one to five, inclusive, are in harmony with the plain intent of the resolutions that the American is to take over the Commercial's assets and business as a purchaser and liquidating agent and not as a creditor. It must be confessed that some of the language in the sixth paragraph taken by itself, may be somewhat incongrouous with the purpose as expressed in the resolutions of the boards of directors. But all parts of a contract must be construed together in its interpretation. The sixth paragraph begins with an express acceptance by the American of the appointment as liquidating agent of the Commercial. The assets of the Commercial were already in possession of the American when the contract was signed. These assets come into the American's possession by force of the resolution of its directors, which authorized the transfer of them and the assumption by the American of the Commercial's liabilities upon condition that the American's directors estimated them "sufficient in amount and in value", to

pay the Commercial's liabilities. The American's directors had acted and fulfilled the condition; the trade was closed; the assets were turned over and the Commercial had ceased to do business, and the contract was intended to be a memorial of the transaction authorized by the resolution of the directors of the two banks. The American's directors would be delayed until funds could be realized from its assets. The American was desirous of absorbing the business of the Commercial with its consequent advantages. It was willing to liquidate
67 the Commercial's affairs by advancing it own money to pay the Commercial's debts, and to account and pay over to the shareholders of the Commercial whatever excess of assets over liabilities there might be. But before any excess could arise, the American was to repay or reimburse itself for the interest on the money advanced by it before it realized on the Commercial's assets. The amount of the debts of the Commercial which the American assumed was definitely stated; these debts were to be paid at once by the American. This amou[illegible] the ad[illegible]ion of interest accruing intermediate the time of payment and the time of realizing on the assets of the Commercial was the money consideration of the transfer of the Commercial's business and assets to it. Any excess from the realized assets, would go to the Commercial's shareholders and the American agreed to account for same. There are no words in the contract that the money advanced by the American is to be a loan to the Commercial; there are no words of defeasance in the contract appropriate to a construction that the assets were taken over as a pledge. And when we consider that the parties expressed in their contract that the American was to take over the business of the Commercial, which included its good will and right to do business, we cannot conclude that this

most valuable and important benefit to the American was to be acquired and enjoyed by it as security for a loan of money. The contract strips the Commercial of every attribute of a going concern. When the contract was made the Commercial's business its assets and all of its available financial resources became the property of the American Bank. The Commercial remained but a legal myth, without tangible qualities evidencing its existence. I do not think an implication can be drawn that this phantom of the law was expected to respond to the payment of a debt utterly beyond its power to meet. Verbal inaccuracies in a contract must yield to the manifest intent of the parties as gathered from the four corners of the instrument.

It is argued that the provision for holding the assets of the corporation as security for money advanced in the event of a discontinuance of the liquidation
68 for any reason beyond the control of the American, is inconsistent with the conclusion we have reached. It will be borne in mind that at the time the contract was made the Commercial's assets were in the hands of the American bank though the shareholders of the Commercial has not assented to the bank's liquidation. Only shareholders may authorize the liquidation of a national bank. The contract was made by the directors in advance of and in contemplation of the shareholders' action, and this clause very probably was inserted as a precaution against a contingency that might nullify the transfer as a purchase because of lack of power in the directors to liquidate the bank. Be that as it may, the bill alleges that the shareholders of the Commercial did ratify the contract and no lack of power on the part of the directors to make the contract is presented.

This claimer of release of the shareholders from their statutory liability is without particular significance.

The directors had no power to release them and at most this clause is but a disclaimer that their contract is not intended to have such effect.

Several cases have been cited in the argument bearing on the question. Wyman v. Wallace. 201 U. S. 230; Richmond v. Irons, 121 U. S. 27; George v. Wallace, 135 Fed. 286; Schofield v. State Natl. Bank 97 Fed. 282. I have carefully examined these cases and have derived much benefit from them in construing this contract. All of them have distinguishing features. Every contract possesses its individuality and similar contracts which have been construed by Courts are only to be looked to as shedding light upon the particular contract under review. After careful consideration I have reached the conclusion; that under the resolutions of the directors of the two banks and the contract the American purchased the business and assets of the Commercial, and assumed all of the assets of the Commercial, and assumed all of the latter's debts and further agreed to refund (if any) the excess to be realized from the Commercial's assets after reimbursing itself for the sum paid in extinguishment of the Commercial's debts, with interest;

69 that under the contract no relation of debtor and creditor was created or intended to be created; that the shareholders of the Commercial are not individually liable under the statute to the American bank for the deficiency between the amount it expended in payment of the debts of the Commercial assumed by it and that realized from a conversion into cash of the Commercial's assets. Let an appropriate order be prepared sustaining the motion to dismiss the bill.

This November 8th, 1917.

BEVERLY D. EVANS,
U. S. Judge.

Filed Nov. 8, 1917.
L. M. ERWIN,
Clerk.

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## SUPPLEMENTAL OPINION.

When this bill was submitted on the motions to dismiss it, I reached the conclusion that the bill should be dismissed, and undertook to state the reasons therefor in an opinion filed November 8th, 1917. Leave was granted to take an order sustaining the motions to dismiss, but before this order was taken complainant moved to amend its bill; which was allowed subject to pending motions to dismiss and to subsequent motions to dismiss the bill as amended. Motions to dismiss the bill as amended have been filed.

The amendment states in full the resolutions of the directors of the two banks, which were epitomized in the contract; and alleges that under these resolutions the assets of the Commercial were not purchased but taken as collateral security for an indebtedness of the Commercial to the American bank; that no notes were taken as contemplated in the resolution, as it was found to be impracticable to take notes; but that the money was advanced under an agreement between the banks that the indebtedness should be carried as an over-draft and that such over-draft should be secured by
70 the assets which were transferred as collateral security. The system of dealing and accounting between the two banks under this arrangement is set forth; each bank was alleged to have made separate reports to the Comptroller of Currency, and in these reports the Commercial Bank listed as a liability the

amount due by it to the American and the American included such liability in its reports under the head of loans and discounts. Plaintiff attached a resolution of the stockholders of the Commercial Bank ratifying the action of its board of directors, as contained in the resolution of August 1st, 1914, and the contract of August 11th, 1914, made pursuant to such resolution. It was further alleged that on July 1st, 1916, the directors of the Commercial Bank accepted the offer of the president of the American to purchase the Commercial Bank's building, fixtures and furniture for $40,000, to be credited on the Commercial's indebtedness to the American. The prayers of the original bill were amended so as to include a prayer for judgment against the Commercial Bank.

It is well to bear in mind that the purpose of this bill is to enforce a stockholders' liability under Revised Statutes, Sections 5150, 5151 (U. S. Comp. Statutes, 1916, Sections 9806, 9807). These sections apply to the voluntary liquidation of a national banking association by a vote of its shareholders owning two-thirds of its stock. It is not pretended in this bill that all of the shareholders participated in the liquidation of the Commercial Bank, so that the case must be considered from the standpoint of official action by the stockholders placing the bank in voluntary liquidation.

Liquidation in strict pursuance of the statutes begins with action by the stockholders authorizing it. But this was not the course followed in this instance. The directors of the two banks acted in the matter under resolutions which they severally adopted. The whole of the Commercial's business was taken over by the American; all of the assets of the Commercial were transferred and delivered to the American, and a contract was en-

tered into by the directors of the two banks,
71 as a memorial of what they had done under these resolutions. Affairs were in this condition when the stockholders were called together. In their resolution the stockholders purported to ratify.

1. The resolution of their board of directors, dated August 1st, 1914, transferring and assigning the assets of the association to the American National Bank.

2. The contract between the two banks made pursuant to the resolution of their board of directors.

3. The action of a special meeting of stockholders approving the resolution of the board of directors and the contract aforesaid.

It is this ratifying resolution which constitutes the voluntary liquidation by the stockholders. They interpreted the resolutions of their directors in the condensed form contained in the contract, and ratified the contract with this understanding. I undertook in my opinion to demonstrate that this contract was definite and unequivocal, and did not create the relation of debtor and creditor between the banks. The full text of the resolutions was not before me. The parties so clearly expressed their conception of their meaning that I do not think any ambiguity exists which justifies a reference to them. But looking at the contract as it was presented to the shareholders for their ratification, these facts apear:

1. The Commercial's directors had recommended in their resolution that it was expedient to go into voluntary liquidation under Sections 5220, 5223 of the Re-

vised Statutes, and that the stockholders should be called to consider a consolidation with the American National Bank of Macon, "by sale of its assets to said bank."

2. The directors of the Commercial Bank had authorized its officers to transfer to the American National Bank "as cash or as collateral for the notes of this association all of its assets", and that the American should "take over the business" of the Commercial. The assets had been turned over, but no notes were taken indicating any indebtedness.

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The American National Bank by resolution has assumed all of the Commercial's debts, and its directors were authorized to make a contract with the directors of the Commercial "or with such liquidating agent as may be appointed for said association." Thus clearly indicating that the American intended to buy the assets, because the resolutions contemplated the same character of contract was to be made with the directors of the Commercial Bank as would be made with its liquidating agent, in case the Bank had appointed a liquidating agent. A loan could not be made to the liquidating agent of a National banking association so as to make the stockholders individually liable for it.

On further consideration, I am confirmed in my opinion that the contract should be construed as one of purchase, and not of pledge of the Commercial's assets to the American.

It is contended that the contract is ambiguous and in its essence is executory, and that the stockholders of the bank are bound by the practical construction put on it by the directors at the time of its ratification by the stockholders. I freely concede that where an executory contract is ambiguous the practical interpretation put

upon it by the parties who are to be bound thereby may be considered in arriving at the true meaning of the contract. This rule is applicable here, because the contract is not ambiguous, and the acts and conduct of the directors can not bind the stockholders, who had a right to rely on the written instrument.

The stockholders' resolution authorizing the sale of its banking house and fixtures, adopted nearly two years after the contract of consolidation of the banks, and the sale of assets of one to the other was made, is of no evidentiary value as explaining the contract of August 11th, 1914. Nor do the pleaded facts justify the interposition of the doctrine of estoppel.

73 Wherefore, the petition as amended should be dismissed, as provided in the order accompanying this opinion.

This January 21st, 1918.

BEVERLY D. EVANS, Judge.

Filed January 22, 1918.

IRENE ELKINS, Deputy Clerk.

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74 ORDER SUSTAINING MOTION TO DISMISS.

The above stated cause came on to be heard, and was argued by counsel. And whereupon, upon consideration thereof, it is ordered, adjudged and decreed that the said bill of the American National Bank of Macon against the said defendants named in the motion to dismiss be granted as to each and all of them, and that the said bill as amended be and the same is hereby dismissed as to each and all of said defendants.

It is further hereby ordered, adjudged and decreed that the said defendants do recover of the plaintiff, the American National Bank of Macon, the costs of Court in this behalf laid out and expended, to be taxed by the Clerk of this Court.

Let this order and decree be entered on the Minutes of the Court.

This January 21st, 1918.

BEVERLY D. EVANS, Judge.

Filed January 22, 1918. Irene Elkins, Deputy Clerk.

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75 MANDATE.

United States of America: SS:

The President of the United States of America.

To the Honorable the Judge of the District Court of the United States for the Southern District of Georgia.

Greeting:

Whereas, lately in the District Court of the United States for the Southern District of Georgia, before you, in a cause between American National Bank of Macon, plaintiff, and Commercial National Bank of Macon and others, defendants, No. 25 in Equity, wherein the decree of the said District Court, entered in said cause on the 21st day of January, A. D. 1918, was in favor of the said defendants, Commercial National Bank of Macon, and others; and against the said plaintiff; as by the inspection of the transcript of record of the said District Court, which was brought into the United States Cir-

cuit Court of Appeals for the Fifth Circuit, by virtue of an appeal sued out by the American National Bank of Macon, agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and eighteen, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said Transcript of record, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, reversed;

It is further ordered, adjudged and decreed that the appellees be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

November 15th, 1918.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause as according to right and justice, and the laws
76 of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward Douglass White, Chief Justice of the United tSates, the ninth day of December, in the year of our Lord one thousand nine hundred and eighteen.

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Filed Dec. 11th, 1918. Irene Elkins, Deputy Clerk.

77 ORDER MAKING MANDATE OF THE CIRCUIT COURT OF APPEALS JUDGMENT OF THE COURT.

An appeal having been entered from the order and decree of this Court, dated on the 21st day of January, 1918, sustaining certain motions to dismiss the bill of complaint filed by the defendants respectively, and upon considering said appeal, the Circuit Court of Appeals for the Fifth Circuit having entered its judgment reversing the said order and decree of this Court; and the mandate from the said Circuit Court of Appeals having been transmitted to this Court, and having been duly filed, it is upon motion of Orville A. Park, Esquire, of counsel for the plaintiff, considered, ordered and adjudged that the judgment of the Circuit Court of Appeals be made the judgment of this Court, and the bill of complaint be reinstated;

It is further ordered that the plaintiff, The American National Bank of Macon, do have and recover of the defendants the costs of said appeal, including the costs in the Circuit Court of Appeals, to be taxed by the Clerk of this Court; and that execution therefor issue upon request of plaintiff.

And it is so ordered, this 18th day of December, 1918.

BEVERLY D. EVANS,
United States Judge.

Filed Dec. 18, 1918. L. M. Erwin, Clerk.

78 ORDER OVERRULING MOTION TO DISMISS BILL.

Upon motion of Orville A. Park, of counsel for Plaintiff, it is ordered that the several motions to dismiss the original bill as amended be overruled and denied upon each and all the grounds thereof, and that the plaintiff do have and recover from the several defendants respectively, its costs in this behalf expended.

It is further ordered, that the defendants file their answers to the said bill as amended by the 23rd day of January, 1919 and the cause proceed according to the rules and practice of this Court.

So ordered, this fourteenth day of January, 1919.

BEVERLY D. EVANS,
U. S. Judge.

Filed January 4, 1919. L. M. Erwin, Clerk.

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79 ANSWER OF C. M. ADAMS, ET ALS.

Come now defendants, C. M. Adams; W. T. Anderson; C. H. Andrew; C. H. Andrew, trustee for Clarence, James and Martha Andrew; Miss Mary Barman; Mrs. W. M. Barman; L. H. Burghard; Central Trust Company; Commercial and Savings Bank; Leon S. Dure; F. H. Hertwig; E. D. Huguenin; E. N. Jelks; Mrs. Mattie J. Lane, executrix of Andrew W. Lane, deceased; Thomas B. West, temporary administrator of Claude Estes; J. W. Minter; Cecil Morgan; T. C. Parker; A. J. Sa[illegible]s; Mary Lou Smith; J. Freeman Hart; P. D. Todd; W. P. Wheeler; B. A. Wright; Mrs. Ruby Stafford; J. Tom Dent; P. W. Pullin; R. W. Dickerson;

John W. Grant; Mrs. Annie Inman Grant; E. Y. Mallory; Frank L. Mallory; The Commercial National Bank; A. B. Hinkle; Mrs. Lena P. Jelks; Joel A. Smith; Alexander Erwin; Mrs. H. G. Leak; W. A. McKenna; Jessie P. Streyer; H. C. Tindall; Julia C. Tindall; guardian for Bessie Tindall and J. S. Tindall; The Atlantic National Fire Insurance Company; F. W. Williams; P. H. Williams; Guy Armstrong; Oscar Bradley; W. T. Beeland; L. O. Benton; L. O. Benton & Brother; J. S. Coon; Mrs. Anna L. Dasher, executrix of Arthur L. Dasher deceased; Frederick C. Reis, Jr., executor of E. C. Reis, deceased; R. L. Davis; J. Marion Dunwoody; Kenneth W. Dunwoody; W. Elliott
80 Dunwoody; W. E. Dunwoody; W. H. Hightower; R. E. Hightower; J. C. Hinton; Evelyn W. Hubbel; G. W. Hubbel; Macon Cooperage Company; E. A. Middlebrooks; Mrs. Bessie N. Proudfit, executrix of A. Proudfit, deceased; W. A. Roush, agent; W. A. Roush; Ed. A. Sheridan; Mrs. Lizzie M. Shorter; R. L. Smith; W. D. Wells; W. E. Wilburn; W. T. Myers; W. A. Daniel; W. A. Little; A. H. Birdsey; Mary Virginia Daniel; Miss Meta Isabel Pace; J. W. Payne; McEvoy Book & Stationery Company; Queen Howell; .....
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and make plea and answer to the petition filed in said cause as follows:

1.

Defendants admit that the plaintiff's alleged claim is based on an Act of Congress, and that the amount claimed exceeds the sum of three thousand dollars.

2.

Defendants deny that the plaintiff is, and was at the date mentioned in the petition, a creditor of the Commercial National Bank of Macon in any sum whatsoever.

3.

Defendants deny that the bill was brought for the benefit of any person, firm, association, or corporation, save and except for the benefit of the plaintiff.

4.

Defendants aver that the plaintiff has paid off and discharged, or is in contract and duty bound to pay off all debts against the said Commercial National Bank; the plaintiff having promised and undertaken so to do in consideration of a transfer of all
81 the assets of said Commercial National Bank, and of the business of said Commercial National Bank, as evidenced by the contract exhibited to the petition, as well as by the facts hereinafter set forth.

5.

Defendants deny that they are liable to the plaintiff as shareholders of said Commercial National Bank, or in any other relationship; and deny that under the contract referred to, and the facts, circumstances and nature of the transactions between plaintiff and said Commercial National Bank on and after August 1, 1914, any Act of Congress relating to the liability of shareholders of the National Banking Associations has any bearing upon or relation to said transactions.

6.

Defendants deny that the said Commercial National Bank, on July 31, 1914, applied to plaintiff for a loan; and aver that, as will be hereinafter set forth, the President of said Commercial National Bank and the President of the American National Bank had been for a period of four or five months prior to August 1, 1914, discussing a merger or consolidation of the two banks; and that on account of a certain rumor, which is hereinafter referred to, the president of said Commercial National Bank deemed it advisable to renew the negotiations for consolidation or merger; and that although the said Commercial National Bank was apparently solvent, it was in such condition with respect to the character of its assets that it could not continue a banking business in the event any unusual run or demands had been made upon it. And defendants aver,

82 that on August 1, 1914, the officers and directors of said Commercial National Bank, finding it desirable to discontinue the banking functions and business of the Commercial National Bank, agreed with the officers and directors of the plaintiff bank to transfer to the plaintiff all the assets of said Commercial National Bank, as well as the business of said Commercial National Bank; and the officers and directors of the plaintiff, in consideration of said assets and business, agreed to pay off and discharge all debts of the Commercial National Bank, and to return to the shareholders of the said Commercial National Bank such overplus as might remain from the avails of the assets of the Commercial Bank, after deducting the amounts paid to the creditors of the Commercial Bank, together with seven per cent interest the year, or such sums as might be advanced from the plaintiff's funds

prior to realization upon the Commercial Bank's assets. That the plaintiff, under the agreement, was also entitled to take credit to itself for expenses of realization upon said assets. That the only condition of the undertaking of plaintiff was, that its officers should first inventory, examine and measure the value of the Commercial Bank's assets so as to give assurance of safety and security. That prior to August 1, 1914, the banking history of Macon had not been such as to inspire the confidence of depositors. That within the preceding twelve years, three of the largest banking institutions in Macon had closed their doors under business stress and embarrassment. That on August 1, 1914, plaintiff was the largest banking institution in Macon or Central Georgia. That its officers and directors realized that the enforced closing of the doors of the Commercial Bank, and a liquidation by the National Comptroller, or a receiver of the Court, would gravely imperil the business of plaintiff. Further, the plaintiff was extremely anxious to have turned to its banking house the deposits of the Commercial Bank and the
83 business of that Bank. That it was in these circumstances and aspects that the officers of the plaintiff made the agreement referred to. And, as agreed, the officers of the plaintiff critically examined the assets of the said Commercial National Bank and adjudged them sufficient in amount and value to make the plaintiff safe and secure in its undertaking, and to protect it against loss.

7.

Defendants deny that the assets of the Commercial Bank were transferred to the plaintiff as security for a loan or loans of money made by the plaintiff to the

Commercial bank, or advanced to the Commercial Bank, in the ordinary or usual course of business. That the security which the plaintiff was to have, and all that the contract called for, was the judgment of its officers that the Commercial Bank's assets were sufficient in amount and value to make the undertaking safe.

8.

Defendants aver that the only sense in which an advancement by the American National Bank was contemplated was in view of the necessity which might rest on the plaintiff to pay the creditors of the Commercial Bank before the plaintiff could reduce the Commercial Bank's assets to cash.

10.

Defendants admit that the officers and directors of the Commercial Bank, on August 1, 1914, transferred and delivered to the plaintiff all assets of the Commercial Bank, including its cash on hand, bills receivable, stocks, bonds, and securities, its banking house, and other real estate, and all other assets. Defendants aver that said transfer and delivery was then and so made in accordance with the agreement hereinabove referred to, under the circumstances referred to, and for the purpose hereinabove referred to.

84

11.

Defendants admit that the plaintiff took charge of all said assets, but deny that the delivery or receipt was under any contract other than the one hereinabove re-

ferred to. Defendants deny that said assets constituted or were intended to constitute a security save as is set forth in Paragraph 10 of this answer. That the said contract of August 1, 1914, Saturday, having been made, the Commercial Bank, on August 1, 1914, closed its doors, corner of Second Street and Cotton Avenue, Macon, Georgia, forever. That between the time of the execution of this contract and the coming of August 2, 1914, the officers of the plaintiff examined the Commercial Bank's assets, and pronounced them sufficient to meet the condition of the agreement. That in view of and in interpretation of the contract under which the said Commercial Bank closed its doors, the plaintiff and the said Commercial Bank, by and through their proper officers, announced to the world a merger and consolidation of the two banks,—thus increasing the preeminence of the American National Bank, the plaintiff, and making it the largest bank in Middle Georgia,—"A Million Dollar Bank." That this announcement was made to the public in the way of advertisements in the Macon Daily Telegraph, one of the newspapers published at Macon, Georgia, on August 2, 1914; and in the Macon Evening News, the other newspaper published at Macon, Georgia, on August 3, 1914, there being no issue of the Macon Evening News on August 2, 1914, that being Sunday. That these advertisements, the one carrying the signature of the said Commercial National Bank, and the other signed by the plaintiff,—in words hereinafter set forth,—were prepared by and under the supervision of the President and
85 other officers of the plaintiff, and were caused by the said President and other said officers to be printed in said newspapers. That the said advertisements appeared as follows:

## EXHIBIT A.

"To Depositors and Customers, Commercial National Bank: We are pleased to announce that a merger has been effected with the American National Bank and this institution. All the assets of the Commercial National Bank have been transferred to the American National, the deposits in the Commercial National having been placed with the American National to the credit of our depositors, and the business of the Commercial National will hereafter be conducted at the offices of the American.

There will be no interruption of any kind in the business of our former customers. Their checks will be honored as usual at the American. This merger, in the opinion of the directors, is a great achievement for the business interest of this section, making of the American National Bank the largest bank in Middle Georgia, and placing Macon at the forefront, creating a bank with resources of sufficient amount to care for a great volume of business.

Arrangements have been made to protect the interests of stockholders, a meeting of whom will be held on August 11, to ratify the action of the directors.

The officers and directors of the Commercial take this opportunity of expressing their sincere appreciation of the patronage which has been accorded and bespeak the kindliest consideration of the American. Depositors with the Commercial National should use checks of the Commercial National as heretofore until they transfer their accounts to the American, or make other arrangements.

COMMERCIAL NATIONAL BANK,
MACON, GEORGIA."

EXHIBIT B.

"To the Depositors and Customers, Commercial National Bank; Macon, Georgia:

In order to better serve the business interest and people of this community and section, we are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National Bank has been effected. The assets of the Commercial National has been taken over, and we will take care of all the business formerly handled by the Commercial National. Our facilities for handling this extra large value of business are the very best, and with the addition of these deposits the preeminence of the American National as the largest bank in Central Georgia has been increased.

The money on deposit with the Commercial National has been transferred to us, and we stand ready to pay your checks against same and to handle any other of your banking business which may be desired.

Checks should be written on the blanks of the Commercial National as heretofore until you give di-
86 rections for the transfer or the depositor makes other arrangements. We invite you to come in and see us and if we can be of service to you it will give us great pleasure to know it.

AMERICAN NATIONAL BANK,
Macon's Million-Dollar Bank."

That prior to the banking hours of August 3, 1914, the removable assets of said Commercial Bank were removed to the banking house of the plaintiff, situated on the corner of Cherry and Third Streets; and there the plaintiff, as alleged in the paragraph of the petition, "from and after that date paid in due course, and as called upon, all the depositors of said bank, its bills

payable," and such other liabilities as the plaintiff admitted were liabilities, in accordance with the agreement hereinabove set forth, and for the considerations hereinabove set forth. That on August 1, 1914, as was well known to the plaintiff,—counseled and insisted upon by the plaintiff,—the said Commercial Bank ceased for all time to perform the usual and ordinary functions of a banking institution, and never again entered into the usual and ordinary course of a banking business.

12.

Defendants admit that the contract entered into between the plaintiff and said Comemrcial Bank was reduced to writing. Defendants aver that the resolutions of the Board of Directors of plaintiff and said Commercial Bank, respectively, are correctly construed and epitomized in the preambles to the contract annexed to plaintiff's petition, and aver that the allegations of plaintiff's amendment,—specific and responsive answer to which will hereafter be made,—are not in keeping with the contract, the epitome of the said resolution, or the facts of the case.

13.

Defendants admit that a copy of the written contract is annexed to the petition, and defendants aver that this contract was executed ten days after the Com-
87 mercial Bank had closed, suspended its banking functions, and abandoned the usual and ordinary course of business.

14.

That, as was announced in the advertisements aforesaid, a meeting of the shareholders of the said Commer-

cial Bank was called and held on August 12, 1914, for the purposes of ratifying the contract of merger or consolidation which had been advertised, and to authorize a liquidation of the said Commercial Bank's assets for the purpose of ascertaining what, if any, amount would be forthcoming to the shareholders of the said Commercial Bank. That defendants are informed that there were present at said meeting shareholders representing more than two-thirds of the Capital Stock, though defendants do not admit this averment. Defendants Guy Armstrong ..... and ..... were not present at said meeting. Defendants aver that certain shareholders were neither present nor represented by proxy. That at the said meeting the contract, copy of which is annexed to the petition, was presented, and in the confusion of the disaster, was read. That the meeting was attended by the attorney and authorized agent of the plaintiff,—the agent who had drawn the said contract. That at said meeting, some shareholder, whose name is to these defendants unknown, made a question as to the propriety and meaning of that portion of section six of the contract which was and is in the words following:

"And it being further distinctly agreed and understood that neither the resolutions of said board of directors of said Associations, nor this contract, shall relieve the shareholders of the Commercial National Bank from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability for any deficit which may remain after exhausting the other assets of said Association in the payment of its liabilities."

That the attorney-at-law for the said Commercial Bank, himself a shareholder of said bank, stated
88 to the meeting that the said provision of Section 6 of the contract could not and did not affect the nature of the contract, and that the matter of shareholders' liability was not capable of being attached or released by contract. That the said attorney-at-law and agent of the plaintiff, then present, apparently acquiesced in the said contract. That under the existing circumstances,—the doors of the said Commercial Bank having been closed ten days previously, the removable assets of the said Commercial Bank having been physically transferred to the banking house of the plaintiff, the announcement having been, by the officers two banks, made to the world that the said Commercial Bank and the plaintiff had been merged and consolidated, which said announcement was contemporaneous with or immediately following the taking over by the plaintiff of the entire business of the said Commercial Bank; and that, under the statement of the attorney for the said Commercial National Bank, aforesaid, acquiesced in and apparently ratified by the attorney-at-law and agent of the plaintiff, the said contract, as exhibited with the petition, was ratified by the said shareholders.

14.

Defendants aver that at the time of the call for a meeting of the said shareholders, and at the time of the ratification by and at said meetings, the said shareholders and these defendants believed that the announcement of the said two banks published as aforesaid, and by the authorities aforesaid, spoke the truth; and that the agreement of the respective boards of directors of the two banks, and the contract drawn and presented

under that agreement, was a contract of merger and consolidation, and did not create any relationship of debtor and creditor. Defendants aver that the plaintiff is estopped in good conscience to assert the contrary.

89 16.

Defendants aver that the said statement made as aforesaid by the attorney of the Commercial Bank, and acquiesced in and ratified by the agent and attorney-at-law of the plaintiff, led these defendants, and the other shareholders, to believe that the quoted portion of Section Six of the contract was without force and effect; and that in good conscience the plaintiff is estopped to assert the contrary.

17.

These defendants admit, that on September 30, 1914, another meeting of the shareholders of said Commercial Bank was held, and that at said meeting a resolution was adopted providing for the liquidation of the assets of the said bank, and admit that the said resolution was adopted by more than two-thirds of all the shareholders of the said bank.

18.

Defendants, for want of sufficient information, cannot admit or deny the allegation as to a certificate of said resolution to the Comptroller of the Currency for his approval.

19.

Defendants deny that said bank was then first placed in liquidation, for defendants aver that the plaintiff had,

on August 1-2, 1914, taken all the assets of said bank, and, on and after August 1, 1914, handled and controlled said assets as the property of petitioner. That the said meeting of September 30, 1914, was merely a ratification by the shareholders, in compliance with the provisions of U. S. Statutes, of the consolidation of the two banks which had taken place on August 1, 1914, as hereinbefore alleged. Defendants aver that this action of the shareholders of said bank, on September 30, 1914,
90 was requested and required by the plaintiff, which, through its duly authorized attorney-at-law, represented to said shareholders at said meeting that said action was required to comply with the Statutes of the U. S.,—partly in view of threatened Court proceedings by parties at interest looking to an interference with the original and real agreement between the officers and directors of the two banks. That one such suit threatened during the period which intervened between August 12, 1914, and September 29, 1914, was actually filed on September 29, 1914, by A. H. Birdsey. Defendants aver that certain of the shareholders of said bank were not present at said meeting, and were not represented by proxy. Defendants aver that a liquidation was necessary, not only in compliance with the provisions of the U. S. Revised Statutes, but also to ascertain what overplus was forthcoming for the benefit of the shareholders of said Commercial Bank.

20.

Defendants admit, that under the agreement in this answer set forth and referred to, plaintiff took charge of the assets of said Commercial Bank, and proceeded at once,—beginning August 3, 1914,—to reduce said assets to cash. Defendants admit that said cash was applied

by the plaintiff to reimbursing the plaintiff for moneys advanced by the plaintiff in point of time in advance of its full realization of the assets of said Commercial Bank, to discharge the obligations of the Commercial Bank; all which the plaintiff was in duty bound to do in consideration of the said contract of merger and consolidation, and of the enjoyment by the plaintiff of the business of the said Commercial Bank which plaintiff had taken over under the contract.

21.

Defendnts deny that there was at any time any advancements to the said Commercial Bank in the nature of a loan.

91 22.

Defendants deny that there was ever any indebtedness by said Commercial Bank to the plaintiff on account of the transactions referred to in the plaintiff's petition; and they deny that any sum was ever due the plaintiff by reason of said transactions by either the said Commercial Bank or its shareholders.

23.

For want of sufficient information, defendants are unable to admit or deny the allegations contained in Paragraph 10 of plaintiff's petition.

24.

Defendants admit that the Capital Stock of said Commercial Bank was three hundred thousand dollars ($300,000), consisting of shares of one hundred dollars ($100.) each.

25.

Defendants are advised and admit that the 12th paragraph of the petition of plaintiff sets forth correctly an excerpt from and a provision of the National Bank Law relating to the liability of shareholders of a National Bank for all contracts, debts and engagements of such bank; but defendants deny that there was created by the transaction referred to in the petition, and under the statements of fact contained in this answer, any contract, debt or engagement of said Commercial Bank within the purview or meaning of said law.

26.

For want of sufficient information, these defendants cannot make response or admit or deny the al-
92 legations of the plaintiff's petition as to the completeness of the liquidation of the assets of said Commercial Bank; or the allegation as to insufficiency of said assets to pay the liability of said Bank. Defendants aver that there are no creditors of the Commercial Bank. Defendants aver that the plaintiff is not any such creditor; and aver that if any creditors of said Commercial Bank have not been paid, the plaintiff has not performed the obligation assumed by it under the agreement herein referred to. Defendants deny that they, either of them, or any other shareholder of said Commercial Bank, as such shareholder, are indebted to the plaintiff in any sum.

27.

For want of sufficient information, defendants can neither admit or deny, or make responsive answer, to

the allegations contained in Paragraph 14 of the plaintiffs petition. save that the names, addresses and holdings of stock of these defendants is correctly set forth.

28.

For want of sufficient information, defendants can neither admit nor deny, nor make responsive answer to Paragraph 15 of the plaintiff's petition, save that the names, addresses and holdings of stock of defendants is correctly set forth.

29.

Defendants are without knowledge or information as to the allegations of Paragraph 16 of plaintiff's petition,—which alleges the names, residences and holdings of stock by—shareholders residing outside of the State of Georgia. Defendants, for want of sufficient information, cannot admit or deny the allegations in Paragraph 17 of plaintiff's petition that the shareholders named in the 15th and 16th paragraphs of plaintiff's petition constitute all the shareholders of the said bank.
93 Defendants aver, however, that although the Commercial National Bank is named as a share holder to the extent of 631 shares, and issued as such, the plaintiff has agreed that it will not insist upon a judgment against the shareholder named.

30.

Defendants are without sufficient information to admit or deny the allegation, that after applying the value of the remaining assets of the said Commercial Bank, there will be a deficit between the avails from the en-

tire assets and the discharged obligations of said Bank amounting to three hundred thousand dollars ($300,000). Defendants deny that plaintiff is a creditor of said Commercial Bank, or ever was such creditor in any of the tranasctions referred to; and denies that any liability of shareholders exists.

31.

Defendants aver that Mr. R. J. Taylor, the president of plaintiff bank, after making a careful examination of the assets of said Commercial Bank, stated to the officers of the said Commercial Bank that said assets were sufficient to pay all liabilities, and to pay the par value of the Capital Stock; and said R. J. Taylor stated to the said officers,—several months after the liquidation began,—that the shareholders of the said Commercial Bank would receive 60 per cent. of the par value of their stock.

32.

In response to the allegations contained in Paragraph 19 of the plaintiff's petition, these defendants say: That in the spring of 1914, E. Y. Mallory, the president of the Commercial Bank, approached R. J. Taylor, the president of the plaintiff bank, and stated to said R. J. Taylor that he, E. Y. Mallary, and his associates, desired to retire from the banking business, and sug-
94 gested that the said R. J. Taylor consider a merger or consolidation of the two banks. That both Taylor and Mallory expressed the view that such a merger or consolidation was desirable, but that both thought that the result could be better achieved in the fall of 1914. That a short while prior to August 1, 1914,

a report was made to one of the bank officers of Macon, Georgia, such officer not being connected with either the American National Bank or the Commercial National Bank, that the Commercial National Bank was in need of ready money. That this report reached the ears of E. Y. Mallory, president of the Commercial Bank; whereupon the said Mallory sought out R. J. Taylor, president of the plaintiff bank, and told him of the report, stating to the said Taylor that the Commercial Bank had on hand sufficient cash to readily meet all ordinary demands; but that unusual or abnormal demands which might reasonably follow such a report or rumor would seriously embarrass said Commercial Bank. That thereupon the said Taylor stated to said Mallory that the time for a merger or consolidation of the two banks had come. That thereupon a meeting was arranged, to be attended, and which was actually attended, by the several officers of the plaintiff bank and of the said Commercial Bank. That at said meeting, the cashier of the Commercial National Bank exhibited to said Taylor, as president of the plaintiff bank, all the assets of the Commercial Bank. That these assets were critically examined by the said Taylor and other officers of the plaintiff bank separately and in detail. That the examination consumed practically seven hours. That at the conclusion of this examination, the said Taylor expressed entire satisfaction at the amount and value of said assets and stated that he was willing to merger or consolidate the business of the two banks, the
95 plaintiff bank to take over the entire business of the Commercial Bank, take an absolute transfer of all its assets, pay off all the liabilities of the Commercial Bank, and then restore to the shareholders of the Commercial Bank, and not to the Commercial Bank, any overplus which might remain after

discharging said liabilities, together with the necessary expense of the administration of liquidation. That no mention was made of a loan by the plaintiff to the Commercial National Bank. That the said E. Y. Mallory stated to said R. J. Taylor that he would agree to the merger of the two banks on three conditions; First, that all depositors wishing to withdraw their deposits would be paid promptly; second, that the same consideration should be by the said American National Bank shown to the customers of the Commercial Bank as had been previously shown these customers by the Commercial Bank; and, third, that at all events the shareholders of the Commercial Bank should be taken care of. That to all these conditions the said R. J. Taylor agreed, stating that there was no apparent reason why the shareholders of the Commercial Bank should not receive one hundred per cent. of their stock. That this contemplated transaction would mean a complete cessation of the usual banking functions of the Commercial Bank and a final delivery of the overplus assets to the shareholders of the Commercial Bank. That during the day of August 1, 1914, the attorneys of the plaintiff bank submitted to the directors of the Commercial Bank the resolution exhibited in the plaintiff's petition, which resolution was passed on August 1, 1914. On the next and second days, respectively, the advertisements hereinbefore referred to, published in the Macon Daily Telegraph and the Macon Evening News, respectively, were published at the instance of the President of plaintiff Bank. That the officers of the two said banks, knowing that it would be necessary, to protect the agreement against interference by State and Federal Courts, to have the liquidation conform to the provisions of the Revised Statutes of the United States called

96 the meetings of August 12, 1914, and September 30, 1914. At the same time, the plaintiff bank, as was its right under the contract, began the liquidation of the assets of the Commercial Bank on August 3, 1914.

33.

In answer to Paragraph 1 of the plaintiff's petition, these defendants say that they are informed and admit that Exhibit B. is a correct copy of the Resolution adopted by the Board of Directors of said Commercial Bank on August 1, 1914. For want of sufficient information, these defendants cannot admit or deny that Exhibit C is a true copy of the resolutions of the respective boards of directors of the two banks, as epitomized in the preambles of the contract.

34.

Defendants aver that the assets of the Commercial Bank were delivered by that bank to the plaintiff as cash, and not as collateral for any indebtedness, past, present or prospective. Defendants aver that the said assets were purchased by the plaintiff under the terms and conditions in this answer set forth. They deny that the said assets were transferred or delivered to secure an indebtedness, and aver that they was no indebtedness.

35.

In answer to Paragraph 4 of the Amendment to plaintiff's petition, these defendants deny that there was ever any contemplation of notes to be executed by the Commercial Bank, or its officers, and deny that the making

of notes was any more practicable or impracticable at one time than at another. They aver that no mention was ever made of notes, for the sufficient reason that no indebtedness or loan was ever contemplated. Defend-

97 ants further deny that any agreement was made between the officers or finance committee of the Commercial Bank and the plaintiff, or its officers, to the effect that a claimed indebtedness should be carried as an overdraft of the Commercial Bank. That the officers of the Commercial Bank knew that the plaintiff would necessarily carry an exact accounting of the administration or liquidation of the assets of the Commercial Bank, as well as of moneys paid out in discharge of the liabilities of the Commercial Bank and the expenses of the administration and liquidation, because this accounting was necessary in order to determine what return there would be to the shareholders of the Commercial Bank. That neither the officers nor the finance committee of the Commercial Bank made any suggestion or agreement as to the manner in which these accounts were to be kept, and did no more than to co-operate with plaintiff's officers and employees to hold all the business of the Commercial Bank for the benefit of the plaintiff and to make the administration or liquidation as complete, full, prompt, economical and accurate as possible. That as a necessary incidental part of the accounting which was required of the plaintiff under its contract, an accurate statement of the amounts paid out to depositors of the Commercial Bank was required; and that as a matter of convenience and simplification, the various amounts paid to the depositors of the Commercial Bank in a given day were aggregated at the end of the day, and a check was drawn by E. N. Lewis, formerly cashier of the Commercial Bank, said check showing the aggregate of

said daily payments,—permitting one entry to be made on the records instead of many entries. That in this way the accuracy of the accounts was daily verified by said E. N. Lewis. Defendants aver that this plan was suggested and put into effect by the officers of the plaintiff, as a matter of convenience and verification,—the plan being adopted after the plaintiff took over all the business of the Commercial Bank, and
98 being put into effect without any conference with the president or board of directors of the Commercial Bank. That under the plan of taking over the business of the Commercial Bank, the plaintiff requested E. Y. Mallory, president of the Commercial Bank, to become one of the vice-presidents of plaintiff bank; and under said plan the plaintiff employed E. Nat Lewis as assistant cashier of the plaintiff bank; and that the said E. Nat Lewis mas serving as assistant cashier of the plaintiff bank at the time the checks referred to were drawn.

36.

Defendants admit that as collections were made on the notes and other receivables of the Commercial Bank, credit was given on the records or accounts which carried the statements and facts of the administration or liquidation. Defendants aver that this accounting was necessary under the contract to determine the amount of the overplus for the benefit of the Commercial Bank's stockholders.

37.

In answer to Paragraph 5 of the Amendment to plaintiff's petition, these defendants deny the allegation that

for some two weeks after the said agreement by which the plaintiff took over the business of the Commercial Bank, the Commercial Bank continued in active operation. Defendants deny that the Commercial Bank continued in operation for any period of time after said agreement was made. That, as shown by the allegations of the petition, made before the necessity of amendment became apparent, pursuant to said agreement, the plaintiff took charge of all said assets so transferred to it by said bank * * * * and from and after that date (August 3, 1914) it paid in due course and as called upon all the depositors of the said bank, its
99 bills payable, and other liabilities."

38.

Defendants aver, that after the plaintiff took over the business of the Commercial Bank, it was principally concerned in retaining the patronage of the customers of the Commercial Bank; and that the officers of the plaintiff with this purpose uppermost, employed five or six of the former employees of the Commercial Bank, to deal with the former customers of the Commercial Bank, and to make collections of maturing receivables of the Commercial Bank,—the services of these men being charged and carried as an expense of administration or liquidation as provided in the contract. That the officers of the plaintiff, realizing the familiarity of these men with the deposit accounts and receivables of the Commercial Bank, requested them to handle these matters in portion of plaintiff's bank set apart for said administration and liquidation. That the said men were not employees of the Commercial Bank. That the Commercial Bank had no employees. That the payments and collections referred to in the amendment to

plaintiff's petition were made by these men in the office and service referred to. That in order to retain all deposits and deposit accounts of the Commercial Bank, the officers of the plaintiff felt that such customers should not be required to deal with strange bank employees, and were forced immediately to make deposit in some new and strange bank, requested the employees referred to for a few days to receive deposits in the name of the Commercial Bank, and in the same manner as deposits had previously been received by the Commercial.

39.

Defendants deny that the said Commercial Bank made any clearing through the Clearing House, and aver that everything to be so cleared passed through the
100 plaintiff bank.

40.

Defendants aver that the only way in which the Commercial Bank could transfer to the plaintiff bank amounts of deposits with other bank was to give to the plaintiff checks on such other banks. That in this sense, and in this way only, did the Commercial Bank draw checks on such other banks.

41.

Defendants deny that funds to pay the depositors of the Commercial Bank were loaned by the plaintiff; and aver that when the necessity for such funds arose, the plaintiff paid the depositors through the administration or liquidating organization,—as it was in contract bound to do. That such checks as were drawn

for such funds constituted a part of the plan of accounting and verification hereinabove referred to. Defendants deny that in said administration any amount ever became due by the Commercial Bank to the plaintiff. Defendants deny that any checks were drawn on the plaintiff under the transactions herein referred to, except for mere accounting purposes, as hereinabove set forth.

42.

In response to the allegation of the Amendment to plaintiff's bill that the Commercial Bank continued in business after August 1, 1914, these defendants aver that the only survival of the said Commercial Bank after August 1, 1914 consisted in the fact that it maintained its corporate existence for the purpose of executing such other writings as were necessary to fully affectuate the transfer of its assets and the liquidation of the Association, as was provided definitely by the fourth section of the written contract made
101 between the two banks.

43.

In answer to the sixth paragraph of the plaintiff's petition, defendants deny that the plaintiff purchased only the banking house of the said Commercial Bank. Defendants aver that the plaintiff took all said assets in transfer by purchase under the agreement referred to.

44.

Defendants admit that the plaintiff submited to the officers of the Commercial Bank a statement of the price the plaintiff would allow in the accounting for the

banking house of the Commercial Bank,—the plaintiff to have the permanent use and enjoyment of the said banking house. Defendants aver that this was required by a sense of fairness and good conscience. It would have been unconscionable for the plaintiff to take this building at an arbitrary figure of its own choosing. Defendants aver that the price of this building was a factor which would affect the final balance or overplus to be returned to the shareholders; that in this view, and for that reason, and for no other, the plaintiff submitted to the officers of the Commercial Bank a statement of the price that the plaintiff would allow in accounting for the banking house of the Commercial Bank, and that this price was confirmed by the officers of the Commercial Bank. Defendants aver that this transaction took place twenty-three months after the said Commercial Bank closed its doors and suspended business.

45.

In answer to Paragraph 7 of the plaintiff's Amendment, defendants deny that any indebtedness of the said Commercial Bank to the plaintiff arose out of the transaction in question or that there was any overdraft of the Commercial Bank in the nature of an obligation, contract, debt, or engagement. Defendants deny that the proper officers of the Commercial Bank made
102 any report to the Comptroller of the Currency as to the indebtedness of the Commercial Bank to the plaintiff. And answering specially, the defendant, T. C. Parker, pleads that on October 31, 1914, there was filed by certain creditors of his a petition to have him adjudicated a bankrupt within the meaning of the Act of Congress relating to bankruptcy; the said petition having been filed in the District Court of the United

States for the Western Division of the Southern District of Georgia,—a Court having jurisdiction of both the person and subject matter; that the said petition contained all the necessary jurisdictative averments; and that thereon he received his discharge in bankruptcy on April 28, 1915; that the plaintiff is the only person or concern holding a claim, or an alleged claim, of indebtedness against the shareholders of the Commercial National Bank as such, and is the only person or concern who claims to be a creditor of said Commercial Bank. That the plaintiff through its managing officials, its president, vice-president, and its cashier, had due and timely notice of the aforesaid petition in bankruptcy against him, and actual notice thereof in time to have afforded them an opportunity to prove their said alleged debt against him, which, if a debt at all, there was provable a debt on which he was liable and which became due before the filing of said petition in bankruptcy and said adjudication in bankruptcy. Wherefore, the defendant, T. C. Parker, pleads his said discharge in bankruptcy as an answer to plaintiff's claim.

43.

And answering specially, the defendant, P. D. Todd, pleads that on February 24, 1917, there was filed by certain creditors of his a petition to have him adjudicated a bankrupt within the meaning of the
103 Act of Congress relating to bankruptcy, the said petition having been filed in the District Court of the United States for the Western Division of the Southern District of Georgia,—a Court having jurisdiction of both the person and subject matter, said petition containing all the necessary jurisdictative averments, and thereon he received his discharge in bank-

ruptcy on August 21, 1917; that the plaintiff, American National Bank, is the only one holding a claim or an alleged claim of indebtedness against the shareholders of the Commercial National Bank of Macon as such, and is the only plaintiff who claims to be a creditor of said bank; that the plaintiff through its managing officials, its president, its vice-president and its cashier, had due and timely notice of the aforesaid petition in bankruptcy against him, and actual notice thereof in time to have afforded them an opportunity to prove their alleged debt against him, which, if a debt at all, there was provable a debt on which he was liable and which became due before the filing of said petition in bankruptcy and said adjudication in bankruptcy. Wherefore, the said defendant, T. C. Todd, pleads his discharge in bankruptcy as an answer to plaintiff's claim.

46.

Defendants, further answering, say: that the plaintiff has no right to maintain this suit against them, and no interest in the subject matter of said suit, and no title to the debt alleged to be due to said plaintiff by these defendants, because they show:

That on August 11, 1914, The Commercial National Bank agreed to procure the proper resolutions to be passed by its shareholders appointing said American National Bank the liquidating agent for the Commercial National Bank, in liquidation for consolidation, as provided in the agreement made between said banks; as appears by Article LLL of Exhibit A. to said bill. That on September 30, 1914, as appears from Exhibit
104 E., the shareholders of the Commercial National Bank did appoint the American National

Bank the liquidating agent for the Commercial National Bank; and the American National Bank became such agent and assumed the duties thereof. They further show that on or about October 19, 1916, the stockholders of the American National Bank, in contemplation of going into voluntary liquidation, did convey unto Joel Hurt all its property, assets, choses in action, claims and demands, including its alleged claim against these defendants, and also appointed said Joel Hurt the liquidating agent for said American National Bank, in liquidation. That by the terms of the agreement between said Joel Hurt and the stockholders of the American National Bank, it was provided that the said Hurt should pay $150. per share for the stock of the American National Bank, and in addition to the $150. to be paid absolutely and by cash by him, he further agreed (in the event the American National Bank should be liquidated) to pay to the shareholders pro rata any amount which might be realized in excess of $150. per share. That the American National Bank did, on or about October ...., 1916, by action of its stockholders, as provided by law, go into voluntary liquidation of its affairs, and appointed said Joel Hurt its liquidating agent, and conveyed and assigned to him all of its property, assets, claims, and demands against its debtors, including its accounts, promissory notes, choses in action, due to said American National Bank, and after that time the said American National Bank had no title to same, and no right to sue for the same. That at the time the American National Bank filed said bill against these defendants, and now it has no title to and no interest in the alleged debt against these defendants, and no right to sue for the same, and no right to bring said suit against these defendants.

105 47.

The defendant, Julia C. Tindall, as guardian for Bessie K. Tindall, F. C. Tindall, and J. S. Tindall, further answering says, that she has in her hands as guardian of said wards no property of any kind, and that since said stock in said Commercial National Bank in the name of the said wards was issued to and purchased by them, to-wit: one share in the name of Bessie K. Tindall; one share in the name of F. C. Tindall; and two shares in the name of J. S. Tindall, she has no property of any kind in her possession, custody or control as guardian of said Bessie K. Tindall, F. C. Tindall, and J. S. Tindall, except said four (4) shares of stock in said Commercial National Bank.

HALL & GRICE,
R. C. JORDAN,
Solicitors for defendant: The Commercial National Bank; C. M. Adams, W. T. Anderson, C. H. Andrew, C. H. Andrew, trustee for Clarence, James and Martha Andrew; Miss Mary Bierman, Mrs. W. M. Bairman, L. H. Burghard, Central Trust Company, Commercial & Savings Bank, Leon S. Dure, Thos. B. West, temporary administrator of Claude Estes, deceased; F. H. Hertwig, E. D. Huguenin, E. N. Jelks, Mrs. Mattie J. Lane, executrix of Andrew W. Lane, deceased; J. H. Minter, Cecil Morgan, T. C. Parker, A. J. Sams, Mary Lou

Smith, J. Freeman Hart, P. D. Todd, W. P. Wheeler, B. A. Wright, Mrs. Ruby Stafford, J. Tom Dent; E. Y. Mallory and Frank L. Mallory.

E. M. SMITH,
HALL & GRICE,
Solicitors for P. W. Pullin, and R. W. Dickerson.

HALL & GRICE,
JOHN H. SLATON,
Solicitors for John W. Grant and Mrs. Annie Inman Grant.

MINTER WIMBERLY,
106 CHARLES AKERMAN,
JESSE HARRIS,
Solicitors for Mrs. H. G. Leak, W. A. McKenna, Jessie P. Streyer, H. C. Tindall, Julia C. Tindall, guardian for Bessie Tindall, F. C. Tindall and J. S. Tindall.

FEAGIN & HANCOCK,
Solicitors for F. W. Williams, P. H. Williams. and Guy Armstrong,

RYALS & ANDERSON,
Solicitors for The Atlantic Fire Insurance Co.

WILL GUNN,
Solicitor for A. B. Hinkle, Mrs. Lena P. Jelks, Joel A. Smith, and Alexander Erwin.

C. L. BARTLETT,
R. L. BERNER,
GREENE F. JOHNSON,
Solicitors for Oscar Bradley, W. J. Beeland, L. O. Benton, L. O. Benton & Brothers, J. S. Coon, Mrs. Anna L. Dasher, executrix of Arthur L. Dasher, deceased; Frederick C. Ries, Jr., executrix of F. C. Ries, deceased; R. L. Davies, J. Marion Dunwoody; Kenneth Dunwoody; W. Elliott Dunwoody; W. E. Dunwoody; W. H. Hightower R. E. Hightower; J. C. Hinton; Evelyn W. Hubbell; Geo. W. Hubbell; Macon Cooperage Company; E. A. Middlebrooks; Mrs. Bessie N. Proudfit, Executrix of A. Proudfit, deceased; W. A. Roush; W. A. Roush, Agent; Ed. A. Sheridan; Mrs. Lizzie M. Shorter; R. L. Smith; W. D. Wells; W. E. Wilburn; W. T. Myers; W. A. Daniel; Mary Virginia Daniel; W. A. Little; A. H. Birdsey; Miss Meta Isabel Pace; J. W. Payne; McEvoy Book and Stationery Company; and Queen V. Howell.

Filed Jany. 30, 1919.

L. M. ERWIN, Clerk.

107 ANSWER OF A. M. STEWART.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

American National Bank of Macon, Plaintiff,
vs. In Equity No. 25.
Commercial National Bank of Macon, and its shareholders, Defendants.

Bill to Enforce Shareholders' Statutory Liability.

To the Honorable Judge of the District Court of the United States for the Western Division of the Southern District of Georgia:

A. M. Stewart, named in paragraph 15 of the original bill filed in the above stated matter, as a defendant shareholder, comes within Twenty Days after the service of the subpoena upon him in said matter and makes answer to said bill as follows:

1.

He admits the allegations contained in paragraph 1 of said bill, that the suit is brought under the laws of the United States and that the amount in controversy exceeds Three Thousand Dollars.

2.

Defendant denies the allegations contained in paragraph 2 of said petition which alleges in substance that plaintiff is a creditor of the Commercial National Bank of Macon, called defendant Bank, he denies that plaintiff is a creditor of defendant Bank in the sum of $320,-

102.82, besides interest as alleged or in any other manner or amount.

Defendant says that on August 1st, 1914, plaintiff purchased the defendant bank and on August 3, 1914, took possession of all its assets that plaintiff absorbed its assets and assumed its liabilities and that there is no relation of debtor and creditor existing now nor has there ever been such relation between plaintiff and the defendant Bank and consequently no statutory liability on the part of the shareholders of the defendant Bank could or does exist.

108 3.

Answering paragraph three of plaintiff's petition this defendant says that for want of sufficient information he can neither admit nor deny the allegation therein "that on the 31st day of July, 1914, said Bank applied to plaintiff for a loan" but he denies that plaintiff made said Bank a loan. He admits that part of said paragraph alleging in substance "that plaintiffs agreed to assume and undertook to pay all the liabilities of the defendant Bank when and as the same should be presented and that the defendant Bank transferred and assigned to plaintiff all of its assets of every kind and character, including its cash, bills receivable, stocks, bonds securities, its banking house and other real estate and all other assets." Defendant says that this transaction was a sale of the defendant Bank to the plaintiff, the consideration of which was the payment of its depositors and assumption of its debts, and in pursuance of same plaintiff absorbed the defendant Bank and defendant Bank went out of business.

4.

Answering paragraph 4 of said petition, this defendant admits that plaintiff took charge of all the assets of said Bank but denies that plaintiff took them as security for a loan. Defendant says that plaintiff took over said assets as a purchaser of same and that the relations of debtor and creditor was not created by said transaction. For the want of sufficient information defendant can neither admit nor deny that from and after August 3, 1914, plaintiff "paid in due course and as called upon, all of the depositors of said Bank, its bills payable and other liabilities."

5.

So far as this defendant knows, the copy of Articles of Agreement described in paragraph 5 of plaintiff's petition and attached thereto is a correct copy.

6.

For the want of sufficient information this defendant can neither admit nor deny the allegations contained in paragraph 6 of said petition. This defendant says that if such a meeting was held, he had no notice of same, knew nothing of it, and took no part therein.

7.

Answering paragraph 7 of said petition, this defendant, for the want of sufficient information can
109 neither admit nor deny the allegation that "On September 30th, 1914, another meeting of share-

holders was held that a resolution was adopted placing said Bank in voluntary liquidation, that a copy of same was forwarded to the Comptroller of the Currency and the Articles of agreement between said Bank and plaintiff were again ratified and adopted."

Defendant says that prior to this time, to-wit, on August 1st, 1914, said defendant Bank had been sold to plaintiff and that plaintiff has been in possession of same since Aug. 3d, 1914, and that if any such action as that described in said paragraph was taken it was null and void as the defendant Bank lost its existence on Aug. 3d, 1914, when it was consolidated with and absorbed by plaintiff.

8.

Answering paragraph 8 of this petition defendant admits that "pursuant to the Articles of Agreement, plaintiff took charge of the assets of said Bank" but for the want of sufficient information this defendant can neither admit nor deny the allegations therein which state in substance the disposition made of said assets by the plaintiff. This defendant insists that plaintiff has bought said assets and had a right to dispose of them as it saw proper.

9.

Defendant denies the allegations contained in paragraph 9 of said petition which alleges in substance "that plaintiff applied the amount received from the assets of defendant Bank to the indebtedness of defendant Bank to plaintiff and that there is due $320,100,82 and 7% interest on same from Nov. 22nd, 1916." This defendant denies that the defendant Bank incurred an

indebtedness to plaintiff or that plaintiff was or is a creditor of the defendant Bank but says that plaintiff was a purchaser of defendant Bank.

10. -

Defendant for want of sufficient information can neither admit nor deny that part of paragraph 10 of said petition wherein it is alleged that "The assets of said Bank still remaining uncollected and undisposed of are of little value." This defendant says that whatever remains uncollected and undisposed of and the value thereof are the property of plaintiff. This defendant denies the balance of said paragraph and says in answer thereto that there is no debt existing between plaintiff and defendant Bank that plaintiff has no debt against the defendant Bank.

11.

This defendant admits the allegations contained in paragraph 11 of said petition.

12.

Answering paragraph 12 of said petition this defendant says that the law quoted therein is not applicable to the defendant Bank and its shareholders for the reason that when plaintiff purchased said defendant Bank on Aug. 1st, 1914 and took possession of its assets on Aug. 3d, 1914, and as a consideration for its purchase paid its depositors and creditors, there were then no "contracts, debts or engagements" of the defendant Bank outstanding and therefor no liability on the part of it or its shareholders to anybody as all creditors had been satisfied by the consideration paid for it by plaintiff.

13.

The allegations contained in paragraph 13 of said petition are denied by this defendant. He denies that there has been any liquidation of the assets of defendant Bank, he denies that there are any liabilities of said Bank, he denies that "plaintiff is a creditor thereof entitled under the law to enforce for its benefit, and for the benefit of other creditors of said Bank of any exist the statutory liability of the stockholders and to apply the amounts paid thereon to the satisfaction of the liabilities of said Bank." He denies that plaintiff is a creditor of said Bank or that there are any creditors of said Bank or that there is an indebtedness against said Bank.

14.

For the want of sufficient information this defendant can neither admit nor deny the allegations contained in paragraph 14 of said petition which purports to set forth a list of the shareholders of said Bank residing in the Southern District of Georgia, and in the various Divisions thereof, together with the Post Office address and the number of shares held by each party.

15.

For the want of sufficient information this defendant can neither admit nor deny the allegations contained in paragraph 15 of said petition which purport to set out a list of the shareholders of said de-
111 fendant Bank residing in the Northern District of Georgia, together with the Post Office address and number of shares held, except the allegation as to this defendant which is denied.

This defendant says that he is a resident of Decatur, DeKalb County, Georgia, and that he only holds Fifteen shares of the Capital Stock of the defendant Bank instead of Fifty Shares. Said fifteen shares being represented by Stock Certificate No. 52 of said Bank.

16.

For the want of sufficient information this defendant can neither admit nor deny the allegations contained in paragraph 16 of said petition which purports to set out a list of the shareholders of said Bank residing out of the State of Georgia, together with the Post Office address and number of shares held by each.

17.

For the want of sufficient information this defendant can neither admit nor deny the allegations contained in paragraph 17 of said petition which alleges in substance that the preceding paragraphs correctly set forth the shares of stock, the owners and numbers, etc., except insofar as it applies to this defendant. This defendant denies same so far as he is concerned and says that he is the owner of Stock certificate No. 52 for Fifteen shares and no other.

18.

This defendant denies the allegations contained in paragraph 18 of said petition. He denies that plaintiff has a debt against said defendant Bank for any amount and denies that an assessment of any amount will be required to be levied on each share of stock.

19.

This defendant says that the prayers of the petition should be denied for the reason that there are no liabilities of said Bank outstanding and unsatisfied, that there are no undisposed of assets, that no assessment is necessary against the shareholders and that plaintiff is entitled to no judgment against the shareholders.

20.

In answer to the amendment filed in the above stated matter by the plaintiff on Nov. 16th, 1917, this defendant for the want of sufficient information can neither admit nor deny the allegations contained in paragraph 1 of said amendment but says that if said
112 copies are true copies of resolutions passed, they were passed after the purchase and sale of defendant Bank.

21.

For the want of sufficient information this defendant can neither admit nor deny the allegation contained in paragraph 2 of the above described amendment but says that if the same are true excerpts from the resolutions referred to that said resolutions were passed after the sale of the defendant Bank to plaintiff and after plaintiff had been in possession of same for sometime.

22.

This defendant denies the allegations contained in paragraph 3 of the amendment above described which alleges in substance "That the assets of said Bank were

transferred in pursuance of resolutions B and C not as cash but as collateral security." This defendant says that they were transferred in pursuance of a sale of defendant Bank to plaintiff as cash, on Aug. 1st, 1914, that said assets were purchased by plaintiff and received by it as cash and not accepted as collateral security.

23.

For the want of sufficient information this defendant can neither admit nor deny the allegations contained in paragraph 4 of the above described amendment which alleges in substance the manner by which plaintiff handled the assets that it had purchased from the defendant Bank. All this occurred after the sale of said defendant Bank to plaintiff. Defendant denies that the overdraft referred to was "secured" by said assets.

24.

This defendant denies the allegations contained in paragraph 5 of the above described amendment. He denies that defendant Bank continued as a separate Bank or that plaintiff loaned money to defendant Bank or that defendant Bank became indebted to plaintiff.

25.

This defendant denies the allegations contained in paragraph 6 of said amendment. The defendant insists that plaintiff did purchase and accept as cash the assets of the defendant Bank. Defendant says that the resolution described in said paragraph is dated some two years after the real transaction between plaintiff and defendant Bank.

26.

For the want of sufficient information this defendant can neither admit nor deny the allegations con-
113 tained in paragraph 7 of the said amendment alleging in substance the method by which plaintiff handled the assets purchased of defendant Bank but this defendant denies that plaintiff carried the "indebtedness" of said defendant Bank as an overdraft for the reason that there was no indebtedness of defendant Bank to plaintiff.

27.

For the want of sufficient information this defendant can neither admit nor deny the correctness of the copies of resolutions attached to paragraph 8 of the amendment. This defendant says that these resolutions, if correct, were passed after the purchase and sale of defendant Bank to plaintiff.

28.

In answer to paragraph 9 of the above described amendment, asking for judgment against the defendant Bank, for the sum of $320,102.82, and interest at 7% from Nov 22nd, 1916, this defendant denies the right of plaintiff to said judgment for the reason that defendant Bank is not indebted to plaintiff in said amount or in any amount.

Wherefore, this defendant having fully answered prays that he be discharged.

E. M. SMITH,
Solicitor for the defendant, A. M. Stewart.

Filed Jan. 22, 1919.
IRENE ELKINS,
Deputy Clerk.

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114 ANSWER OF J. F. LEWIS, MRS. LAMAR LEWIS OGLESBY AND MRS. CHAS. THOMPSON, FORMERLY MRS. J. E SPRINGER.

To the Honorable Judges of the United States District Court for the Western Division of the Southern District of Georgia:

Comes now J. F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. Chas. Thompson, formerly Mrs. J. F. Springer, three of the respondents in the above stated cause, after having filed their motion to dismiss said cause, and especially reserving their right of said motion and waiving none of the rights of said motion, answers the above complaint, as follows:

I.

These respondents admit that the amount claimed by the Complainant in within cause exceeds the sum of $3,000.00, as alleged in paragraph one of Plaintiff's suit; but, denies any liability as against them for the amount of $3,000.00 exclusive of interest and cost, or for any amount whatever.

II.

These respondents deny the allegations contained in paragraph two of complainant's bill; said paragraph alleging in substance, as follows:

"That the Plaintiff is a creditor of The Commercial National Bank in the sum of $320,102.82, besides interest on said sums at the rate of seven per cent. per annum from the 22nd day of November, 1916, and the Plaintiff filed suit in the nature of creditors' bill for the purpose of enforcing the statutory liability for the shareholders of said bank."

Respondents say the allegations contained therein are not true; and denies that The Commercial National Bank is indebted to Plaintiff as a creditor in any sum whatever.

III.

These respondents deny the allegations contained in paragraph three of Complainant's bill, and say that the allegations therein contained are not true; said paragraph alleging in substance, as follows:

"That the plaintiff agreed to assume and undertook to pay all the liabilities of The Commercial National Bank when the same should be presented for
115 payment, and their securities for the sums to be advanced the Plaintiff had transferred and assigned to them all assets of The Commercial National Bank."

Respondents say that the Plaintiff did not agree to assume to pay the liabilities of The Commercial National Bank of Macon; but, that The Commercial National Bank of Macon entered into a contract and agreement with The American National Bank to consolidate with The American National Bank of Macon, by the purchase of the assets of said Commercial National Bank. The American National Bank, Complainant, was to consoli-

date the assets of The American National Bank by the purchase of assets of The Commercial National Bank, as the contract expressly shows.

These respondents admit that all assets of every kind and character, including cash on hand, bills receivable, stocks, bonds, and securities, its banking house, and other real estate, and all other assets under this said agreement of purchase, and consolidation were transferred and assigned to the Complainant, The American National Bank.

IV.

These respondents admit the allegations contained in paragraph four of Complainant's bill; said paragraph alleging in substance, as follows:

"That the Plaintiff took charge of all the assets on the 3rd day of August, 1914; and from and after that date it paid in due course and as called upon all the depositors of the said bank, its bills payable, and all other liabilities."

Respondents admit that the Plaintiff did take charge of all the assets of The Commercial National Bank of Macon; but did so under the agreement of purchase and consolidation, and did in due course pay, as called upon, all the depositors of said bank, also its bills payable and other liabilities.

V.

These respondents, for want of information, can neither admit nor deny the allegations contained in paragraph five of Complainant's bill, as they have never seen the original contract claimed to have been entered into; said paragraph alleging in substance, as follows:

"That there was an agreement entered into between Plaintiff and The Commercial National Bank reduced to writing, and duly executed; a copy of said agreement being made a part of Complainant's bill."

116 VI.

Paragraph six of Complainant's bill alleges in substance as follows:

"That there was a meeting of the shareholders of The Commercial National Bank and the contract between the Plaintiff and said Bank was expressly ratified and approved by two-thirds of all the shareholders at said meeting, all voting in favor of the ratification of said contract."

These respondents admit that there was a meeting of shareholders of The Commercial National Bank for the purpose of ratifying the contract between the Plaintiff and The Commercial National Bank; which said contract these respondents never saw; but, same was read in said meeting of the shareholders.

That for want of information they can neither admit or deny that the contract and agreement entered into at the time was ratified by two-thirds of the stockholders; but, knows that the respondent J. F. Lewis, personally, and Mrs. Lamar Lewis Oglesby, by proxy, did not assent to said contract, but voted against ratification of same.

VII.

These respondents, for want of sufficient information, can neither admit or deny the allegations contained in

paragraph seven of Complainant's bill; said paragraph alleges in substance, as follows:

"That there was a second meeting of the shareholders of The Commercial National Bank, and that a resolution was adopted placing The Commercial National Bank in voluntary liquidation; and same was ratified and approved by more than two-thirds of the shareholders of The Commercial National Bank.

VIII.

These respondents admit that the Plaintiff did take charge of the assets of The Commercial National Bank, and proceeded to reduce same to cash, in pursuance to the plan of purchase and consolidation; such being alleged in paragraph eight of Complainant's bill.

IX.

In answer to paragraph nine of Complainant's bill, which states in substance as follows:

"That after applying to the indebtedness incurred by the payment of the liabilities of The Commercial National Bank the amounts realized from its assets, there is still due to the Plaintiff by The Commercial
117 National Bank the sum of $320,102.82 with interest."

These respondents deny most emphatically that The Commercial National Bank is indebted to the Plaintiff, The American National Bank of Macon, in the sum of $320,102.82, together with interest at the rate of seven per cent. per annum; and, deny most emphatically any

indebtedness whatever of The Commercial National Bank of Macon to the Plaintiff, or, that The Commercial National Bank is a creditor of the Complainant.

X.

These respondents, for want of information, can neither admit or deny the allegations contained in paragraph ten of Complainant's bill; said paragraph alleging in substance, as follows:

"That the assets of The Commercial National Bank still remaining uncollected and disposed of are of very little value, and there will not be realized from them an amount sufficient to reduce Plaintiff's debt against The Commercial National Bank below $300,000.00, the amount of the capital stock of said bank."

These respondents have not been advised or put on notice whatever as to the amounts of notes due The Commercial National Bank that remains uncollected, and have no information as to the value of same.

Respondents say that they are advised that there was turned over to the Plaintiff, for the purpose of consolidation, and by purchase of the assets to the amount of $1,688,838.33.

XI.

These respondents admit the allegations contained in paragraph eleven of Complainant's bill; which said paragraph alleges that the capital stock of The Commercial National Bank is $300,000.00 divided into three thousand shares, of $100.00 each.

XII.

These respondents deny that under the Act of Congress known as The National Banking Act, as to the liabilities of shareholders in a national bank, which said liability clause of said Act is set out in paragraph twelve; that under the acts and conditions as exist, and as grew out of the affairs of The Commercial National Bank, that they are anyways responsible or liable for any sum whatever to Complainant.

XIII.

These respondents deny the allegations contained in paragraph thirteen of Complainant's bill; said
118 paragraph alleging in substance as follows:

"That the liquidation of The Commercial National Bank assets are now practically complete, and it being manifest that the remaining assets are insufficient to pay the liabilities of said bank; that the plaintiff is a creditor thereof, and is entitled under the law to enforce the statutory liability of the shareholders of The Commercial National Bank."

Respondents deny that there was any liability against them under the law as shareholders of The Commercial Bank. For want of sufficient information they are unable to deny or to admit whether the liquidation is complete or not, or as to condition of the remaining assets; but, most emphatically deny any liability against these Respondents, or any of them as shareholders in The Commercial National Bank.

XIV.

In answer to paragraph fourteen of Complainant's bill, which sets out the names of the persons holding

shares of stock in The Commercial National Bank, the amounts and residence:

These respondents, for want of sufficient information can neither admit or deny the names or amounts of the different shareholders of The Commercial National Bank; but, J. F. Lewis, one of these respondents, denies that he is a holder of Two hundred and Fifty (250) shares of capital stock of The Commercial National Bank, as alleged. This respondent, J. F. Lewis, admits that he is the owner and holder of Fifty (50) shares only of the capital stock; that One Hundred and Fifty (150) shares he held only as collateral to a loan of E. N. Lewis, and not as a stockholder; that he never purchased or subscribed for only fifty (50); that E. N. Lewis was the owner of One hundred and fifty (150) shares, which was transferred to E. N. Lewis, to the respondent, J. F. Lewis, as security for a loan; and that said stock for One hundred and fifty (150) shares issued to him as security for the loan of E. N. Lewis was on the 1st day of January, 1914, re-assigned to E. N. Lewis; that at the time of the purchase and consolidation of the assets of The Commercial National Bank to the Plaintiff, that the Plaintiff was put upon actual notice that this respondent only owned Fifty (50) shares of stock, and that One hundred and fifty (150) of the shares of stock, which appeared on the books in the name of respondent, J. F. Lewis, belonged to E. N. Lewis, and this respondent, J. F. Lewis, is in no way responsible or liable as shareholder of the
119 said One hundred and Fifty (150) shares of stock, that he was actually a bona fide shareholder in The Commercial National Bank of only Fifty (50) shares of stock.

XV.

These respondents, for want of information, can neither admit or deny the allegations contained in paragraph fifteen of Complainant's bill; which said paragraph sets up the names and addresses of the persons and number of shares of the stockholders residing without the Southern District of Georgia.

XVI.

These respondents, for want of sufficient information, can neither admit nor deny the allegations contained in paragraph sixteen of Complainant's bill; which said paragraph sets up the shareholders and place of residence without the State of Georgia.

XVII.

In answer to paragraph seventeen, which states that the shareholders set out in Plaintiff's petition owning in the aggregate 3000 shares of stock, of the aggregate value of $300,000.00, and constitutes all the shareholders of said bank.

These respondents deny that they are anyway liable as shareholders of The Commercial National Bank, for the reasons herein fully set out in their Answer.

XVIII.

These respondents deny the allegations contained in paragraph eighteen of Plaintiff's bill; said paragraph alleging in substance, as follows:

"After applying to Plaintiff's debt against The Commercial National Bank the amount it is estimated will

be collected out of the remaining assets of said bank, and adding to Plaintiff's debt the interest thereon at the contract rate of seven per cent. per annum, the amount of Plaintiff's debt will exceed the sum of $300.000.00, the amount of capital stock, of said bank."

These respondents further answer, as follows:

XIX.

That since the consolidation and purchase of the assets of The Commercial National Bank by the American National Bank, that most of the stock of The American National Bank has been purchased by, and
120 is now being liquidated by The Citizens & Southern Bank of Savannah; that this said purchase of the stock of The American National Bank by The Citizens & Southern Bank, was effected and consummated by Joel Hurt a citizen of Fulton County; that in said purchase of the stock of The American National Bank by The Citizens & Southern Bank of Savannah, Georgia, through the said Joel Hurt, the said Joel Hurt guaranteed and obligated that the assets of The American National Bank in liquidating would realize $150.00 per share, and gave bond, so these respondents are informed, in the sum of $300,000.00, as a guarantee to same. These respondents are informed that it now appears that the assets of The American National Bank will not in liquidating realize the said sum of $150.00 per share, and in order to increase the assets, if possible, of the American National Bank this complaint is instituted. The real person interested in collecting from the shareholders of The Commercial National Bank is the said Joel Hurt, that there has been no assignment or transfer of any obligations of the assets of The

American National Bank to Joel Hurt; and in no way is Joel Hurt, who is the real beneficiary in this said suit, if there should be any benefits derived from same, a creditor of The Commercial National Bank; and there is no contractual relation between The Commercial National Bank, or its shareholders and the said Joel Hurt; and, for this reason the Plaintiff, The American National Bank, having no financial interest in this suit, there can be no recovery on same.

XX.

These respondents say that Complainant's bill is not brought at the instance and request of the Plaintiff, The Amreican National Bank of Macon; and that The American National Bank of Macon is in no ways interested in the outcome, or result of this litigation; that the success or failure of this suit in no ways effect the financial condition of The American National Bank, or its actual shareholders, or its assigns.

XXI.

That at the time of the consolidation and purchase of the assets of The Commercial National Bank by The American National Bank, there was turned
121 over to the said American National Bank, the Plaintiff, assets of the value of $1,688,838.33 that were considered good assets, and the same by judicious handling and proper care and attention in collection of same, should have been sufficient to pay in toto all obligations of The Commercial National Bank.

These respondents are advised that The American National Bank, and its officers, did not give the collection of these assets the proper care and attention

that they should have done, and that they would compromise for small amounts large sums that were against parties who were solvent; and would dispose of property and assets, for much less than its value; and in all their actions and doings dis-regarded the true value of the assets of The Commercial National Bank.

These respondents are unable at this time, on account of not being able to over the books of the Plaintiff, or get information from them as to what amounts have actually been collected; what compromises have been made; the amounts of such compromises; to get information at this time to fully set up all such facts in this their Answer and ask the Court for the privilege of hereafter amending this their Answer, when they will obtain the information desired.

These respondents ask that The American National Bank be ordered to make a full and complete showing of any and every asset turned over to them at the time of the consolidation and purchase; an itemized statement of each and every asset; and also a complete list of what was realized and collected from each and every asset; and an itemized statement of each and every asset now held by The American National Bank.

## XXIII.

These respondents in addition to this Answer herein filed by them, adopt and make as a part of their Answer the Answers of each and every shareholder who files Answer setting up any reason whatever as to why The Complainant should not recover against these Defendants, or, any Defendant shareholder of The Commercial National Bank. There being numerous shareholders of The Commercial National Bank, some of these shareholders may have information, or knowledge,

showing why the Complainant's are not entitled to recovery, of which these respondents are now ignorant; and they hereby adopt and make as part of their own Answer, any and all Answers of each and every shareholder of The Commercial National Bank showing no liability against the shareholders of The Commercial National Bank.

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These respondents having fully answered, prays for a judgment in their behalf.

W. A. DODSON
Solicitor for J. F. Lewis, Mrs. Lamar Lewis Oglesby, and Mrs. Chas. Thompson.

State of Georgia,
County of Lowndes.

You, J. F. Lewis, do solemnly swear that you are one of the respondents named in the foregoing answer; and that the allegations stated therein and the facts as therein alleged so far as stated upon your own knowledge and information, are true; and so far as stated upon information and knowledge of others, you believe them to be true.

J. F. LEWIS.

Sworn to and subscribed before me, this, the 12th day of January, 1917.

R. D. STEVENS,
Notary Public, Lowndes County, Ga.

Filed January 18, 1917.
L. M. ERWIN, Deputy Clerk.

123 AMENDED ANSWER OF J. F. LEWIS, MRS. LAMAR LEWIS OGLESBY, AND MRS. J. E. SPRINGER, NOW MRS. CHARLIE THOMPSON.

Now comes the defendants, John F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. J. E. Springer formerly, now Mrs. Charles Thompson, by their attorney at law, W. A. Dodson, and having heretofore answered the original bill filed in said cause, for plea and answer to the amended bill of complaint filed in the above stated cause, answers the same as follows:

1. In answer to Paragraph 1 of Plaintiff's amended petition as to Exhibits "B" and "C" alleged to be copies of the resolutions adopted by the Board of Directors of the Commercial National Bank, these defendants for want of sufficient information can neither admit or deny the said paragraph as to said exhibit purporting to be copies of the resolutions.

2. These defendants for want of sufficient information can neither admit or deny the allegations in Paragraph 2 of plaintiff's amended petition as claimed to be set forth in Exhibti "B" as to "the authority granted and conveyed to the Officers of the Commercial National Bank, or the powers and authority given to the Offi cers and Finance Committee or the authority as alleged in Exhibit "C" that the Commercial National Bank agreed to assume and pay the liabilities of said Commercial National Bank" but deny any liability.

3. These defendants deny the allegations set forth in Paragraph 3 of Plaintiff's amended petition, wherein it is alleged "pursuant to the resolutions set forth in

Exhibit "B" and "C", the assets of the Commercial National Bank were transferred to the Plaintiff not as cash but as collateral security for the indebtedness of said bank. That the assets were not purchased by the Plaintiff, or taken or received by it as cash, but were secured solely as security for the indebtedness of said Bank." These defendants say that such allegations are not true and most positively deny same.

4. These defendants, for want of sufficient information, can neither admit or deny the allegations contained in Paragraph 4 of Plaintiff's amended petition, wherein it is alleged that "the Officers and Finance Committee of the Commercial National Bank
124 agreed that the indebtedness of the Commercial National Bank should be carried by the Plaintiff as an overdraft, and that the overdraft should be secured by the assets which were transferred as collateral security," but most emphatically deny that if same was done that same was carried as collateral security, and for want of sufficient information can neither admit or deny that their check was cashed by Plaintiff and charged to the Commercial National Bank, or as to the manner as to how the collections were made and credited.

5. These defendants for want of sufficient information, can neither admit or deny the allegations contained in Paragraph 5 of Plaintiff's amended petition, wherein it is alleged "as to the manner in which collections were made by the Plaintiff for the assets transferred and assigned to them by the Commercial National Bank, but denies any liability or any indebtedness by them as stockholders of the Commercial National Bank.

6. These defendant, for want of sufficient information, can neither admit or deny the allegations contained in paragraph 6 of the Plaintiff's amended petition, wherein it alleges the condition and terms for the sale of the former Bank Building of the Commercial National Bank.

7. These defendants, for want of sufficient information can neither admit or deny the allegations contained in Paragraph 7 of the Plaintiff's amended petition, wherein it is alleged the manner and form in which plaintiff carried the transaction and assets of the Commercial National Bank on their books, and how and in what manner the same was listed and what reports were made of same to the Comptroller of Currency, or what liability were included in the reports of same to the Comptroller of Currency.

8. These defendants in answer to Paragraph 8 of the Plaintiff's amended petition, wherein Plaintiff amends paragraph 7 of the original bill by attaching an alleged copy of the resolutions passed by the shareholders of the Commercial National Bank marked Exhibit "E", and also attaching an alleged copy of resolutions passed by the stockholders ratifying the actions taken by the Directors of the Commercial National Bank. These Defendants deny that said resolutions in any way show liability against them as stockholders of the Commercial National Bank, and deny all indebted-
125 ness to the Plaintiff as stockholders under the terms of said resolutions.

9. These defendants in answer to Paragraph 9 of Plaintiff's amended petition wherein Plaintiff asks judgment against the said Commercial National Bank of

Macon and these Defendants as stockholders of same, for their pro rata share for the sum of Three hundred and Twenty thousand One hundred Two dollars and Eighty-two cents ($320,102.82), deny that they are indebted in any sum whatever to Plaintiff as shareholders of the said Commercial National Bank. These defendants as in their original answer heretofore filed in the within cause, set up and allege their special reason, plea and answer, why they are not indebted to Plaintiff in any sum whatever.

W. A. DODSON,
Of Counsel for J. F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. J. E. Springer, formerly, now Mrs. Charles Thompson.

Georgia, Sumter County.

In person appeared before the undersigned, an Officer duly authorized to administer the oath, W. A. Dodson, who deposes and says that he is Attorney at Law for J. F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. J. E. Springer formerly, now Mrs. Charles Thompson. That these above named Defendants reside out of the County of Bibb, said State wherein said suit is pending, and that the above and foregoing answer is true to the best of his knowledge and belief.

W. A. DODSON.

Sworn to and subscribed before me, this the 30th day of January, 1919.

H. E. ALLEN,
(Seal) Clerk Superior Court.

Filed Jan. 30th, 1919.
IRENE ELKINS, Deputy Clerk.

126 ORDER FOR REFERENCE TO STANDING MASTER.

Upon considering the motion of the plaintiff, The American National Bank of Macon for reference of the issues raised by the pleadings in the above stated cause to a Standing Master, and it appearing to the Court that there are a large number of parties defendant, and that numerous issues, both of law and of fact, are raised by the several answers filed in this cause; and it further appearing that, in order to determine the issues, an examination of the books and records of the plaintiff The American National Bank of Macon, and of the defendant, The Commercial National Bank of Macon will be necessary, and that it is also necessary that the accounts between the plaintiff and the said Commercial National Bank defendant should be stated, requiring an investigation of the accounts of said two banks, covering a period of more than four years; and that it will be necessary to determine who are the stockholders of said Commercial National Bank, and the number of shares of stock held by each, and that for all of these reasons the said case is an exceptional and unusual one within the meaning of the 59th Equity Rule,

It is, therefore, considered and ordered that there be referred to J. N. Talley, Esquire, Standing Master in Equity in this Court, with direction to hear evidence and report his findings of fact and conclusions of law thereon the following issues raised by the pleadings, to-wit:

1. Is the indebtedness claimed by the plaintiff a contract, debt, or engagement of the Commercial National Bank, within the meaning of the Acts of Congress, imposing upon the above holders of National

Banking Associations liability for the debts, contracts, or engagements of such associations?

2. If the indebtedness claimed by the plaintiff, is a debt or engagement for which the shareholders of the Commercial National Bank are liable, what is the amount of such indebtedness?

3. What other liabilities of the Commercial National, in addition to the indebtedness claimed by the American National Bank, are outstanding and unsatisfied, and the amounts thereof, respectively?

127 4. What assets, if any, of the Commercial National Bank remain uncollected or not reduced to cash, and what is the value thereof?

5. After applying to the indebtedness of the Commercial National Bank the assets if said bank remaining in hand, what amount will be due for which the shareholders of the Commercial National Bank will be liable?

6. Who are the shareholders of said Commercial National Bank? What number of shares is owned by each respectively; and what amount must be assessed against each shareholder in order to pay off and satisfy the indebtedness of said bank?

7. Can the American National Bank maintain this suit, or must the suit abate by reason of the voluntary liquidation of said bank?

Also the following special issues raised by certain defendants:

1. Is defendant T. C. Parker discharged or relieved of liability by reason of his discharge in bankruptcy?

2. Is defendant P. D. Todd discharged or relieved of liability by reason of his discharge in bankruptcy?

3. Is defendant John F. Lewis liable as a shareholder on One hundred and fifty (150) shares of stock claimed by him to be the property of E. N. Lewis, and to have been held by him as collateral?

4. Is defendant Mary Virginia Daniel relieved of liability because of her minority?

5. Is defendant Guy Armstrong entitled to plead in abatement the suit pending in the Superior Court of Bibb County, Georgia, in which he seeks to cancel his stock subscription on the ground of fraud?

6. Should the plea of plene administrative filed by Mrs. Mamie H. Haley, Administratrix of Herbert F. Haley, deceased, be sustained?

7. Is Mrs. Julia C. Tindall liable individually for the stock standing in her name as Guardian, or is the estate of her wards solely liable?

Together with any other issues which are raised by the pleadings, or which may be so raised by amendemnts hereafter allowed.

Said Master is directed to file his report for such action, direction and decree as to the Court may seem proper, the right being expressly reversed [reserved] to the parties to file exceptions either of law or of fact, to said report.

The said Master shall have all of the usual
128 powers fo a Master in Chancery, including the right to allow amendments to the pleadings, to compel the attendance of witnesses and the production of books and papers, to fix the times for hearing, and to allow such adjournments thereof as he may deem necessary and proper.

It is so ordered this 19th day of February, 1919.

BEVERLY D. EVANS,
United States Judge.

Filed Feb. 20, 1919.

IRENE ELKINS, Deputy Clerk.

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REPORT OF J. N. TALLEY, MASTER, CONTAINING FINDINGS OF FACT, FINDINGS AND CONCLUSIONS OF LAW, AND REFERENCES TO CERTAIN EVIDENCE.

129 Macon, Georgia, April 20, 1920.

* * * * * * * * * *

134 BILL IN THE NATURE OF CREDITOR'S BILL TO ENFORCE SHAREHOLDERS' STATUTORY LIABILITY.

REFERENCE TO MASTER.

To the Honorable Beverly D. Evans, United States District Judge for the Southern District of Georgia:

Under an order entered on the 19th day of
135 February, 1919, the above cause was referred to me as Master in Chancery with direction

to hear evidence upon certain issues raised by the pleadings, and report the same, together with my findings of fact and conclusions of law thereon.

Pursuant to said order of reference, I have the honor to report that, after due notice to counsel of record for the plaintiff and the defendants, numerous hearings were had before me as Master, at the United States Court Room in the City of Macon, Georgia, for the purpose of taking evidence on the issues referred. At the hearings, attorneys for the respective parties appeared, as will be shown in the stenographic record of the proceedings, filed herewith.

The evidence submitted upon the several issues was stenographically reported, and a correct transcript thereof is filed herewith, identified as follows: "Section I." (pp. 1-217), "Section 2." (pp. 1-49), "Section 3." (pp. 1-78), "Section 4." (pp. 1-195), "Section 5." (pp. 1-95), "Section 6." (pp. 1-79), and "Section 8." (pp. 1-73.) The documentary evidence, identified by exhibit number and referred to in the said transcript, it also filed herewith. For convenience of reference, much of the important documentary evidence has been copied into the stenographic record.

All of said evidence is respectfully reported to the Court.

136 After the taking of evidence had been concluded, the cause was fully argued by Orville A. Park for the plaintiff, and by J. E. Hall, C. L. Bartlett, R. L. Berner, W. A. Dodson, and R. L. Anderson, for the defendants, and briefs have been submitted.

Having carefully considered the evidence and the arguments of counsel, I respectfully report herein my findings of fact and conclusions of law on each of the several issues.

## ISSUE NO. 1.

"Is the indebtedness claimed by the Plaintiff a contract, debt or engagement of the Commercial National Bank, within the meaning of the Act of Congress, imposing upon the stockholders of National Banking Associations liability for the debts, contracts or engagements of such associations?

The determination of this question under the pleadings depends upon whether or not the American National Bank is a creditor of the Commercial National Bank, and necessitates the ascertainment and construction of the agreement entered into between the Commercial National Bank and the American National Bank, by virtue of which, according to the allegations of the plaintiff's bill, the indebtedness to plaintiff arose, and the Commercial National Bank and its shareholders became liable. The written agreement between the two banks was executed on August 11, 1914, in pursuance of resolutions adopted on August 1, 1914, by the Boards of Directors of the Commercial National Bank and the American National Bank. Under said resolutions the assets of the Commercial National Bank were transferred to the American National Bank, and the latter bank assumed the liabilities of the former. The
137 American National Bank contends that while a consolidation of the Commercial National Bank with the American National Bank by a sale of the Commercial's assets to the American had been contemplated, no such consolidation or sale was affected; that under the contract the American took the transferred assets as pledgee to secure a loan or advances of money made to said Commercial National Bank and on its behalf, and that the relation between the two banks

is that of debtor and creditor. The defendants, on the other hand, contend that under the contract the business of the Commercial National Bank was merged or consolidated with that of the American National Bank by a sale and transfer of its assets to the American National Bank in consideration of the latter Bank assuming the payment of the liabilities of the Commercial National Bank, and that the American, therefore, took the transferred assets as purchaser.

The amendment to plaintiff's bill, among other things, undertakes to show that the construction of the contract contended for by plaintiff is the construction placed upon it by the contracting parties themselves while they were engaged in its execution, that is to say, that both contracting parties treated the relation between the two Banks as that of debtor and creditor, and not that of vendor and vendee.

The resolutions adopted by the Boards of Directors of the two Banks on August 1st, contain the first written evidence of the agrement between the Banks, and in construing the contract as reduced to writing and executed on August 11th, these resolutions are the determining factors, for under them the assets of the Commercial National Bank were transferred to the American National Bank. It is material in this case therefore to consider the circumstances leading up to the adoption of these resolutions and the situation of
138 the contracting parties at the time of the adoption of the resolutions so that the Court may view the surrounding circumstances as the parties viewed them.

It is also necessary under the allegations of the amendment to plaintiff's bill, and as well in view of the ambiguity of the written contract, to consider the conduct of the parties after the adoption of the

resolutions of August 1st and after the execution of the contract of August 11th.

Upon the first issue referred, quoted above as Issue No. 1, I find and state the facts to be the following:

## FINDINGS OF FACT.

(1) The Contract, Resolutions of Directors authorizing and of Shareholders ratifying it.

(a). The Contract.

The agreement entered into between the Commercial National Bank and the American National Bank, in pursuance of resolutions adopted by the Boards of Directors of the two Banks on August 1, 1914, was reduced to writing and duly executed on behalf of the two banks by the executive officers thereof, respectively. The original contract, offered in evidence, is filed herewith. A copy is attached to plaintiff's bill, as Exhibit A.

(b). Resolution of the American.

On August 1, 1914, about 10 o'clock in the morning, the Board of Directors of the American National Bank adopted the following resolution:

139 "Resolved, that this Association assume the payment of the deposits, bills payable, and other liabilities of The Commercial National Bank of Macon, shown by the list of liabilities furnished by said Bank to this Bank, and agree to pay the same when and as the same are presented for payment, upon condition

that said Association transfer to this Association as cash, or as collateral for its notes, cash, cash items, bills receivable, bonds, real estate, and other assets, sufficient in amount and in value in the estimation of the officers of this Association to fully protect and secure this Association for any and all amounts so assumed, or shall otherwise satisfactorily secure this association for all amounts paid or assumed; this Association to take over the business of said Asociation in the manner aforesaid, accounting to the shareholders of said Association for any overplus which may remain after paying the indebtedness of said Association in full, and the expenses of realizing on the assets transferred to this Association as aforesaid; this Association to charge nothing for its services in so doing. The Officers of this Association are hereby given full power and authority to carry out the general purpose of this Resolution, the details to be left to the discretion of said Officers, and said Officers are further authorized to make such Contract with the Directors of said Association or with such liquidating agent as may be appointed for said Association, provided, however, that this Resolution shall not become effective until the other Banks of the Macon Clearing House Association shall, by proper resolutions, agree to supply, in proportion to their respective capital and surplus, their proportionate share of cash or exchange that may be necessary to meet withdrawals by depositors not immediately re-deposited in this Association, and other cash demands to which this Association may be required to respond. Provided, further, that in the event the Officers of this Association shall, upon a further investigation of the affairs of The Commercial National Bank deem it unsafe to proceed under this resolution, they shall not do so." (Record, Sec. 1, p. 47).

A copy of this resolution is attached to the amendment to plaintiff's bill as Exhibit C.

(c) Resolution of Commercial.

At 3:30 o'clock in the afternoon of the same day, August 1, 1914, the Board of Directors of the Commercial National Bank met and adopted the following resolution:

"Resolved, that in the opinion of the Board of Directors of this association it is expedient for this association to go into voluntary liquidation under sections 5220 and 5223 of the United States Revised Statutes, and that the officers of this association be and they are hereby directed to proceed under the by-laws to call a meeting of its stockholders to consider this question and the consolidation of this association with the American National Bank of Macon, Georgia, by the sale of its assets to the said bank,

Resolved further, that the exigencies of the situation are such that in contemplation of the liquidation of this association as aforesaid, the Board of Directors of this association hereby authorize the officers of this association to transfer to the American National Bank of Macon, Georgia, as cash, or as collateral for the notes of this association, all of the assets of this association, including cash, cash items, bills receivable, bonds, real estate and personal property and choses in action, of all kinds, which said assets are hereby transferred, assigned and delivered to the American National Bank of Macon, Georgia, in order to fully protect and secure said Bank for all moneys advanced or to be advanced by that bank under the assumption and payment of its deposits, bills payable, and other lia-

141

bilities of this association shown by the list of liabilities this day furnished by this association to said bank,—said American National Bank of Macon, Georgia, to take over the business of this association and to account to the shareholders of this association for any over-plus which may remain after paying the indebtedness for this association in full and the expense of realizing on the assets so transferred, said Bank to charge nothing for its services in so doing.

The officers and finance committee are hereby given full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers and committee, and the said officers and committee are further authorized to make such contracts with said bank as may be necessary or appropriate hereunder."

(Record, Sec. 1, pp. 3-5).

A copy of the above resolution is attached to the amendment to plaintiff's bill, as Exhibit B.

(d) Shareholders meeting, August 12th.

At the meeting of the Board of Directors of the Commercial National Bank held on August 1st a special meeting of the stockholders was called for August 12th, and the Cashier directed to mail a notice of such call to each shareholder, in the following language:

142 "To the stockholders of the Commercial National Bank of Macon, Georgia:

Notice is hereby given that a special meeting of the stockholders of the Commercial National Bank of Macon will be held at its banking house in Macon, Georgia,

at 10 A. M. on August 12th, 1914, and that the business proposed to be transacted at said meeting is the consolidation of this bank with the American National Bank of Macon, Georgia, by the sale of its assets to said American National Bank and the assumption of its liabilities in taking over its business by said bank, including the liquidation of said bank under sections 5220 and 5223 of the United States Revised Statutes.

By order of the Board of Directors,

Cashier".

(Record, Sec. 1, p. 5).

Pursuant to the notice above the shareholders of the Commercial National Bank met on August 12, 1914, with L. O. Benton, as chairman, and G. S. Derry, as secretary, there being presented 2616 shares of stock.

A. W. Lane offered a resolution ratifying and approving the action of the Board of Directors contained in a resolution adopted by the Board of Directors on August 1st, 1914, "transferring and assigning the assets of this association unto the American National Bank, etc.", and ratifying and confirming the contract entered into by the Commercial National Bank and the American National Bank on August 11th, 1914, (Exhibit A.) Mr. Lane then read the contract to the shareholders present, and after discussion, said resolution was unanimously adopted.

A resolution was then adopted placing the Commercial National Bank in voluntary liquidation, "to take effect at the close of business on August 1, 1914," and
143 appointing the American National Bank Liquidating Agent. (Rec. Sec. 1, pp. 16, 21).

(e) Shareholders Meeting, September 30th.

It having been brought to the attention of the Commercial National Bank by the Comptroller of Currency that the stockholders meeting of August 12th had been irregularly called and held in that only ten days notice had been given to shareholders instead of thirty days as required by the articles of association, and further that liquidation could not be made to take effect at a date prior to that on which the liquidating resolutions were adopted, the Board of Directors of the Commercial National Bank issued a call for another meeting of shareholders to be held on September 30th, 1914, and directed the cashier to give notice thereof to the stockholders, the form of notice, so far as the business to be transacted, being the same as used for the meeting of August 12th, above quoted.

A shareholders' meeting was duly held on September 30th, pursuant to said notice to the shareholders, W. T. Anderson was chairman and J. J. McKay, secretary. 2684 shares of stock out of 3000 were represented.

A resolution was adopted ratifying and approving the action of the Board of Directors contained in the resolution of August 1st, ratifying and confirming the contract entered into by the banks under date of August 11th, 1914, and ratifying the action taken by the shareholders at their meeting on August 12th. A copy of this resolution is attached to the amendment to plaintiff's bill as Exhibit F.

144 At the same meeting on September 30, 1914, a resolution, in the form prescribed by the Comptroller of Currency, was adopted placing the Commercial National Bank in voluntary liquidation "to take effect upon this date", and appointing the American National Bank as its Liquidating Agent.

A copy of this resolution is attached to the amendment to plaintiff's bill as Exhibit E.

(Minutes of this meeting are set out in the record, Section I, p. 29 et seq., the Resolutions on pages 30-33).

(2). The Condition of the Commercial.

The condition of the Commercial National Bank at the close of business on August 1, 1914, the date of the resolutions referred to, as disclosed by its books, according to the audit of Alonzo Richardson & Company, in evidence, was as follows:—

145 ASSETS.

| | | |
|---|---|---|
| Loans and Discounts: | | |
| Current | $1,050,420.51 | |
| Past Due | 99,955.83 | $1,150,376.34 |
| Overdrafts | | 6,743.80 |
| U. S. Bonds: | | |
| To secure Circulation | 200,000.00 | |
| U. S. Deposits | 50,000.00 | 250,000.00 |
| Premium on U. S. Bonds | | 4,000.00 |
| Banking House Furniture & Fixtures | | 75,000.00 |
| Due from Allied Banks: | | |
| Security Loan & Abstract Co. | 3482.61 | |
| Central Trust Co. | 35,000.00 | |
| Commercial & Savings Bank | 38,452.45 | 76,935.06 |
| Due from other Banks | 51,089.40 | |
| Items in transit | 16,138.81 | |
| Macon Clearing House | 29,149.36 | |
| Cash & Cash Items | 30,668.78 | 127,046.35 |
| 5% Redemption Fund | | 10,000.00 |
| | | $1,700,101.55 |

## LIABILITIES.

| | | |
|---|---|---|
| Capital Stock | 300,000.00 | |
| Surplus | 80,000.00 | |
| Undivided Profits | 15,368.18 | 395,368.18 |
| Circulation | | 200,000.00 |
| Deposits: | | |
| Individual | 271,929.18 | |
| Banks | 169,860.18 | |
| Savings | 75,527.13 | |
| Certificates | 73,597.24 | |
| Certified checks | 177.50 | |
| Cashier's checks | 5,555.00 | |
| Dividend checks | 477.00 | |
| Macon Clearing House | 697.55 | 597,620.78 |
| U. S. Deposits | | 43,888.66 |
| Due to Banks—Overdrafts: | | |
| Natl. City Bk, N. Y. 68,324.73 | | |
| Harriman Nat. Bk N.Y 3,661.17 | | |
| First Nat. Bk. Balti. 1,648.84 | | |
| | 73,634.74 | |
| Re-Discounts | 179,589.19 | |
| Bills Payable | 210,000.00 | 465,223.93 |
| | | $1,700,101.55 |

146 Eliminating capital stock, surplus, undivided profits and circulation, the remaining liabilities, according to above audit, amount to $1,104,733.37. These are the liabilities referred to in statement attached to the

Contract, Exhibit A of bill, as the liabilities assumed by the American National Bank. Making deduction for U. S. Bonds held to secure circulation, the assets according to this statement of the accountant, the assets on the date mentioned amounted to $1,500.101.55. This shows that, so far as creditors are concerned, the assets of the Commercial on August 1, 1914, exceeded liabilities by $395,368.18.

The true condition of the bank, however, was not so good as indicated by the above statement, although in the estimation of its officers it was amply solvent. For some two months prior to August 1, 1914, it had been in difficulties. A searching examination of its affairs was made by a National Bank Examiner, Mr. Higgins, on June 9, 10, 12 and 13th, and the attention of its officers drawn to the bank's condition. The bank had extended large lines of credit to certain customers, particularly to F. L. Mallary and associates and corporations, to E. N. Jelks, a director, and to director Parker and his companies, the liabilities of these parties and interests amounted to about $400,000.00. The bank had made excess loans in the amount of $103,655.22, and its liability for bills payable and rediscounts was $25,917.66 in excess of amount authorized by law. Among other criticisms of the Examiner were, "overdrafts carried as cash items; failure to report in last report of condition overdrafts, bad debts and loans secured by real estate; anticipation of rent, by crediting to profits the rent derived from offices in bank building for a year in advance; failure to credit at time of issue all checks drawn on correspondent banks."

147 The bank did not have sufficient cash to anable it to properly carry on its business. It was unable to rapidly collect in its receivables. As a result of the Examiner's investigation and at his

suggestion, the business of the bank was to a large extent placed under the supervision of W. T. Anderson and L. S. Dure, of the finance committee, and they had direct charge of its affairs for a month and a half prior to August 1st.

In a letter to the Comptroller of Currency, under date June 13, 1914, the directors say:

"We beg to advise that while we realize that we have heavily overloaned and likewise have several lines of credit which are larger than should have been permitted, there is in our belief absolutely no question as to the solvency of the bank.

"In this connection the management of the bank from now on will be assisted and guided by the addition of Mr. W. T. Anderson to the Finance Committee and it is understood that Mr. Anderson and Mr. Dure are to be consulted in everything in connection with the bank and to have general supervision of its affairs." (Record, Sec. 7, p. 146).

The Comptroller of Currency, under date of June 29, 1914, in a letter addressed to the directors, stated:

"Every effort must be made to realize the extended condition of the bank. ..... The liability of director Parker's corporations and of director Jelks, amounting respectively to $167,159.71 and $137,506.32 must be very materially reduced and hereafter kept within more prudent bounds.

The examiner has advised this office in detail of the transactions in connection with the bank's failure to credit promptly to correspondent banks checks drawn on them, and in holding in the cashier's desk checks of the

First National Bank of Baltimore payable to
148 the Assistant Treasurer of the United States at Baltimore. Such practices are particularly reprehensible and reflect severely upon the management. Such transactions must not be permitted or countenanced, and the incorrect report of condition made to this office March 4th last borders closely upon a violation of the criminal statute." (Rec. Sec. 7, p. 148).

At a directors meeting held on July 14th, a report was submitted by W. T. Anderson and L. S. Dure, of the finance committee. They stated that progress in reducing the three excessive lines of Mallary, Jelks and Parker had not been satisfactory, and further;

"The bank is in need of $100,000.00 to make it above criticism. Its borrowed money is in excess of the amount permitted by about $60,000.00. Its cash on hand is within the limit but too low to be allowed to stand this way. We feel that the $100,000.00 must be forthcoming, and shall leave no stone unturned to accomplish this.

We have made very few loans, and then only in small amounts. It is our opinion that depositors are safe beyond any doubt." (Rec. Sec. 7, pp. 153-4).

In his statement at the stockholders meeting on August 12th W. T. Anderson, referring to Mr. Dure and himself, said:

"We found the bank had overloaned and we were unable to get in enough money on these loans to carry on business. Bad matters got worse. Exchanges were held up on Georgia Banks, and remittances not gotten out promptly. These requests for remittances came

faster and faster, and finally withdrawals by the banks. The drain came stronger than we could take care of. Rumors got afloat." (Sec. 1, p. 18).

149 (b) Loans obtained from Taylor.

In the Spring or early Summer of 1914, E. N. Lewis, who was the Cashier of the Commercial National Bank, applied to R. J. Taylor, president of the American National Bank, for a loan of $20,000, or to have a note for that amount discounted. The American made the loan or the discount for that amount. Mr. Taylor is unable to say whether it was for the Commercial National Bank or not. (Taylor, Sec. 8, p. 2).

About the middle of July 1914, E. Y. Mallary, president and J. J. Cobb, vice president, of the Commercial National Bank, called on R. J. Taylor, president of the American National Bank, at his residence in the evening about 8 o'clock, informed Taylor that E. N. Jelks had a large line with the Commercial which he wished to reduce, and asked if the American would lend Jelks $50,000.00. Taylor consented to make a loan of $25,000. The loan was closed the following day, the American taking as security a pledge of accounts receivable and a mortgage on Jelk's business at Tampa, Florida. (Taylor, Sec. 8, p. 3; Mallary, Sec. 4, p. 21).

A week later, Jelks made application to Taylor for another loan, and Mr. Taylor through the Continental Trust Company, of which he was also president, made Jelks a loan of $17,000. secured by real estate. (Taylor Sec. 8, p. 4).

About this time, according to the testimony of E. Y. Mallary, (Sec. 4, p. 21), the Commercial discounted a

considerable amount of paper with the American. From the audit of Richardson & Company, it appears that on August 1st, the American held two demand notes for $25,000.00 each of the Commercial, secured by pledge of a large number of its customer's notes. This appears to be the transaction referred to by Mr. Mallary, except that the customer's notes were hypothecated in-
150 stead of being discounted.

On July 31, 1914, after the examination of the assets of the Commercial by officers of the American hereafter referred to, and in order to secure cash for the next day's business, the Commercial borrowed $25,000 from the American, giving as security a deed to its banking house. (Mallary, Sec. 4, p. 21; Taylor, Sec. 8, p. 11, Deed).

(c) Rumors of Insolvency. War Imminent.

Shortly prior to August 1st, rumors affecting the solvency of the Commercial National Bank becaume current. (Sillyer, Sec. 7 p. 35; Mallary, Sec. 4 p. 23; Taylor, Sec. 8, p. 1; Anderson, Sec. 1, p. 18).

Mr. Dure testifies (Sec. 4 p. 73).

"On Thursday prior to August 1st—the first time I was getting fearful of the public—we had heard one or two rumors that we knew were very damaging to the bank. On Thursday night I was approached by a gentleman who told me of these rumors and it alarmed me to such an extent that I saw Mr. Anderson that night and stayed with him all night. We were fearful if these rumors continued to spread that the bank could not stand any heavy withdrawals.

ar was imminent at that time. I think war was d ared August 1st. The announcement of war always has the effect of frightening the money market, and we thought it would be more difficult to arrange matters."

151 (3) Negotiations between Mallary and Taylor.

On the evening of July 30th, 1914, E. Y. Mallary, president of the Commercial National Bank, called upon R. J. Taylor, president of the American National Bank; told him of the rumors affecting the Commercial National Bank, "stated the case" of the Bank to him; informed him that it was necessary for the Commercial National Bank to have immediate financial assistance, and that it was desired to obtain the assistance necessary from the American National Bank. Mr. Taylor promised to appoint a committee from the officers and directors of the American to investgate the assets of the Commercial on the following night, in order to determine what, if any, assistance the American National Bank could render to the Commercial National Bank.

The subject of a consolidation or merger of the two banks was discussed to some extent during the conversation, but no terms or conditions of consolidation were mentioned.

Earlier in the Summer of the same year, Mallary, with J. J. Cobb, vice president of the Commercial, had called upon Taylor, for the purpose of obtaining a loan of $50,000.00 from the American for Jelks, a director, for the purpose of enabling Jelks to reduce his loans with the Commercial, which were then excessive in amount. During this conversation, Mallary stated to Taylor that he "never did particularly like the banking business," and had considered discussing with him the question of

consolidating or merging the Commercial with the American; that the Commercial had "loaned pretty heavily to certain parties", that he had very good promise of getting these loans materially reduced, and "then the bank would be in good shape." Taylor at that time received the suggestion with favor, and both
152 agreed to take up the matter further during the following Fall, when both banks "would be in better shape to carry the deal through". No conditions of consolidation were discussed at that time.

(See References to Evidence, herein under (3) and Record, Sec. 4, pp. 2-5, 20-24, Sec. 8, pp. 3-6).

(4) Assets of Commercial Investigated.

On the evening of Friday July 31st, 1914, about eight o'clock, Taylor, president, Hillyer, vice-president, Scott, cashier, Park, a director and of counsel, as a committee from the American, met at the banking house of the Commercial a similar committee from the Commercial composed of Mallary, president, Cobb, vice president, Lewis, cashier, Anderson, a director and member of finance committee, and Lane, a director and the Bank's counsel.

The investigation of assets and conference continued practically all night. The bills receivable and other paper of the Commercial were examined, and were classified by Mr. Taylor under three heads; No. 1, good, No. 2, fair, No. 3, doubtful and bad. According to Mr. Taylor's classification, the paper under Nos. 1 and 2 amounted to barely one half of the total amount of the receivables and paper of the bank, and that under No. 3 was nearly $700,000. in amount.

Near the conclusion of the conference, Mr. Taylor for the American agreed to make a loan of $25,000. to the Commercial to enable it to continue business during the day of Saturday. This loan was at once made, the American taking as security a deed to the banking house of the Commercial.

After the investigation of assets had been completed, Mr. Taylor promised to take up the situation of
153 Commercial with the directors of the American, and later advise the officers of the Commercial, upon what terms, if any, the American could give the Commercial the needed financial assistance.

The subject of a consolidation was again discussed at this conference, but no conditions were agreed upon. Mr. Mallary stated that he would be willing for the Commercial to be consolidated with the American upon three conditions, namely, that its depositors be paid on demand, that its customers be given the same treatment they had been receiving from the Commercial, and that its stockholders be protected. The subject of consolidation was at that time of secondary importance. The chief object of the investigation and conference was to arrange for the Commercial to obtain the necessary money to meet expected withdrawals by depositors and prevent its failure.

(See References to Evidence herein under (4) and Record Sec. 4, pp. 6-7, Sec. 8, p. 40).

The Commercial was considered solvent by Mr. Taylor so far as creditors were concerned. It was known to him that a great deal of its paper was "slow", that the bank had overloaned, and that its assets were not easily convertible into money.

(See letter of Taylor to Comptroller, Rec. Sec. 7, 88).

(5) Situation of the American.

The Commercial National Bank had large deposits and a valuable patronage. In case it was necessary for it to liquidate and go out of business, Mr. Taylor was interested in having these deposits and this patronage as far as possible "absorbed" by the American National Bank. The business outlook at the time was "very bad" war was threatened, there had been several bank failures in Macon during recent years, the failure of the Commercial National Bank would result almost inevitably in the failure of its allied banks, the Commercial & Savings Bank and the Central Trust Company. Mr. Taylor was himself the president of two banks, the American and the Continental Trust Company. Mr. Taylor for the American was therefore further interested in preventing the failure of the Commercial with its attendant disastrous consequences to the other banks and to the business interests of Macon.

(Ref. to Ev. under (5) Taylor, Rec. Sec. 8, pp. 16, 18, 28, 47).

(6) Action of the Directors on August 1st.

After the examination of the Commercial's assets, as above stated, Mr. Taylor called a special meeting of the American's Board of Directors, and submitted to them the request of the Commercial for financial assistance. This meeting was held at ten o'clock Saturday morning. The result was the adoption of the resolution referred to and set out in Finding No. 1 herein. In this, the American offers to assume the liabilities of the Com-

mercial and pay same as and when presented for payment, upon the conditions named therein.

154 At 3:30 o'clock in the afternoon of the same day, the Board of Directors of the Commercial National Bank met and adopted the resolution referred to and set out in Finding No. 1 herein, accepting the offer of the American to assume its liabilities, and transferred its assets to the American, for the purposes set out in the resolution.

The agreement of the two banks, made by their Boards of Directors, respectively, so far as evidenced by writing, will appear from the resolutions themselves.

The resolution of the Commercial was prepared by the attorneys of both banks. They were A. W. Lane attorney for the Commercial and O. A. Park, attorney for the American.

(Ref. to Ev. under (6) Record, Sec. 8, p. 24-5, 63, 72. Exhibits B and C. to amended bill).

(7) Announcement of the transaction is made to the Comptroller of Currency, Bank's Customer's and Public.

Under date of August 1st, 1914, the Cashier of the American National Bank wrote to the Comptroller of Currency, as follows:

"This bank by resolution of its Board of Directors has assumed the liabilities of the Commercial National Bank of this City, contained in a statement of liabilities furnished by the Commercial National Bank, and including deposits, bills payable, and other obligations.

The exigencies of the situation were such that the Directors of the Commercial National Bank, as security

for such advances as this bank will be called upon to make hereunder, have transferred to this Bank all of the assets of the Commercial National Bank. This was done in contemplation of formal voluntary liqui-
155 dation of the Commercial National Bank by consolidation with this bank, but without issuing stock in this bank to the stockholders of the Commercial National Bank. A meeting of the stockholders of the Commercial National Bank has been called for August 12th, at which time it is expected that formal action will be taken for liquidation and consolidation.

In the meantime, announcement has been made that all checks drawn against deposits in the Commercial National Bank will be honored upon presentation at this bank, and the business of the Commercial National Bank will be taken over as far as possible; the liabilities of the Commercial National Bank amount to approximately $1,000,000.00, and its resources appear to be sufficient to discharge these liabilities, although that bank is without ready money or quick assets available for that purpose."

E. N. Lewis, Cashier of the Commercial National Bank, under date of August 3rd, 1914, wrote to the Comptroller, as follows:

"We beg to advise you that the directors of the Commercial National Bank have called a meeting of the stockholders of this Bank to be held on August 12th, for the purpose of consolidating with the American National Bank of this City by liquidation and the transfer of the assets of this Bank to the American National Bank. The exigences of the situation were such that the directors felt justified in contemplation

of action to this end by the stockholders to perfect arrangements today, by which the assets of this Bank have been actually transferred to the American National Bank,
and that Bank has assumed the liabilities of
156 this Bank, and will pay on presentation the liabilities of this Bank."

A letter in the following form was sent out to the customers of the Commercial National Bank by the American National Bank:

"The American National Bank of Macon,

Macon, Georgia, August 1, 1914.

We take pleasure in announcing that this bank has absorbed the Commercial National Bank of this city. On and after this date all checks against deposits in the Commercial National Bank will be honored upon presentation at this Bank.

We are greatly pleased to have your account, and promise you the same courteous and liberal treatment which we have always endeavored to accord to our customers. It is worth something both to a business and an individual to have a checking account with the largest and strongest Bank in Middle Georgia. With a combined Capital and Surplus of over One Million Dollars, and with resources now increased to nearly five million dollars, and with our splendid equipment, we are in a position to extend to our customers every accommodation consistent with sound banking.

We hope you will come in and see us next week, meet our officers and employees, and establish banking relations with us.

With best wishes, we are

Yours very truly,

E. C. SCOTT, Cashier.

157 Newspaper Advertisements.

On Saturday night, August 1, 1914, certain advertisements were prepared in the offices of Hardeman Jones Park & Johnston, attorneys for the American National Bank. Representatives of both banks were present, among them being R. J. Taylor, George S. Jones and O. A. Park, of the American, and Leon S. Dure and W. T. Anderson, of the Commercial. With the knowledge and approval of officers of both banks the advertisements were inserted in the Macon Telegraph of Sunday August 2, 1914, and the Macon News, on Monday August 3, 1914. The advertisements appearing in the Macon Telegraph and Macon News are as follows:

'To Depositors and Customers Commercial National Bank, Macon, Georgia:

In order to better serve the business interests and people of this community and section, we are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National Bank of this City has been effected. The assets of the Commercial National have been taken over, and we will take care of all the business formerly handled by the Commercial National. Our facilities for handling this extra large volume of business are the very best, and with the addition of these deposits, the pre-eminence of the American National as the largest bank in Central Georgia has been increased.

The money on deposit with the Commercial National has been transferred to us, and we stand ready to pay your checks against same, and to handle any other of your banking business which may be desired.

158 Checks should be written on the blanks of the Commercial National as heretofore until you give directions for the transfer or the depositor makes other arrangements.

We invite you to come in and see us, and if we can be of service to you it will give us great pleasure to know it.

AMERICAN NATIONAL BANK.
Macon's Million Dollar Bank."

"To Depositors and Customers Commercial National Bank:

We are pleased to announce that a merger has been perfected with the American National Bank and this institution. All the assets of the Commercial National have been transferred to the American National, the deposits in the Commercial National having been placed with the American National to the credit of our depositors and the business of the Commercial National will hereafter be conducted at the offices of the American.

There will be no interruption of any kind in the business of our former customers. Their checks will be honored as usual at the American. This merger, in the opinion of the directors is a great achievement for the business interests of this section, making of the American National the largest bank in Middle Georgia, and placing Macon at the forefront creating a bank with resources of sufficient amount to care for a great volume of business.

Arrangements have been made to protect the interests of the stockholders, a meeting of whom will be held on Aug. 12, to ratify the action of the directors.

The officers and directors of the Commercial
159 take this opportunity of expressing their sincere appreciation of the patronage which has been accorded, and bespeak the kindliest consideration of the American. Depositors with the Commercial National should use checks of the Commercial National, as heretofore, until they transfer their accounts to the American, or make other arrangements.

COMMERCIAL NATIONAL BANK,
Macon, Georgia."

(8) Removal of Assets and Business of Commercial to American's Building.

(a) Business Conducted at Commercial's Building.

During banking hours of August 1st, 1914, the Commercial National Bank conducted its banking business, as formerly, at its banking house, known as the Commercial National Bank Building at the corner of Cotton Avenue and Second Street, Macon, Georgia. Its active officers and employees were: E. Y. Mallary, president, J. J. Cobb, vice-president, E. N. Lewis, cashier, R. C. Souder, assistant cashier, W. R. Woodward, paying teller, J. M. DeBorde, receiving teller, Cecil Tart and E. Y. Mallary, Jr., book-keepers, Cecile Thorpe, note and collection teller, Miss Ida Durgam, stenographer, and J. M. DeBorde, Jr., collector. At the close of business on that day, the Commercial National Bank ceased to do a banking business in said Building.

(b) Removal to American's Building.

On the morning of Monday, August 3rd, 1914, the cash, cash items and receivables of the Commercial Na-

tional Bank, together with the books and records in active use by it, were carried down to the banking house of the American National Bank, at the corner of Third and Cherry Streets, in the City of Macon, Georgia, and placed in a portion of its banking room assigned and set apart by its officers for the use
160 of the persons having the immediate custody of such cash, receivables, books and records. The space so set apart was in the rear of the space occupied by the officers and employees of the American in carrying on the business of that bank, and contained three cages with windows suitable for tellers, book-keepers' desks and other bank furniture. At the beginning of banking hours on August 3rd, the persons named above as officers and employees of the Commercial National Bank, with the exception of E. Y. Mallary and J. J. Cobb, commenced their work in the space so set apart to them in the American's banking room and assumed the immediate custody of the cash, receivables, books and records, of which they, as officers and employees of the Commercial, had formerly had custody and use during banking hours, while the Commercial was conducting its banking business at its banking house. E. Y. Mallary was in the lobby of the American's building on the 3rd and for several days thereafter, but his activities were largely if not wholly confined to greeting the customers of the Commercial, introducing them to officers of the American, and influencing depositors to transfer their accounts to the American. He left Macon about August 15th and was absent for about two months.

On August 15th the salaries of all the persons above named as coming down to the American's building were paid for the entire month of August, and between the 15th and 31st many of them were relieved from duty.

Those remaining on September 1st, continued on the payroll until the following dates, viz: Thorpe until September 26th, E. Y. Mallary, Jr., until October 6th, E. N. Lewis until October 31st, and DeBorde, Sr., until December 31st, 1914.

161 (9) Commercial's Business Conducted at American's Building.

(a) Commercial's Cash and Receivables Kept Separate Accounts not Transferred to American's Books.

The cash and cash items, amounting to $30,668.78, and the receivables of the Commercial carried down to the American's building on the morning of August 3rd were not turned over to the officials of the American or incorporated with the cash and receivables of the American, but retained in the custody of the Commercial's officers and employees, who were occupying the space in the American's banking room set apart for the use of the Commercial's officers and employees, heretofore named. The Commercial's employees continued to have custody of the cash and cash items of Commercial until August 25th, after which time "the Commercial had no actual cash." The receivables continued to be kept in the Commercial's "pouch" in the custody aforesaid until paid or otherwise disposed of, except as they were taken out temporarily by L. P. Hillyer, Hansell Hillyer, or Karsten for collection.

The accounts on the books of the Commercial were not transferred to the books of the American, but the books in use by the Commercial at the time of the removal continued to be used after the removal and the entries in the books continued to be made in the same way, and the employees of the Commercial, until Kar-

sten succeeded DeBorde in January, 1915. (Souder, Record Sec. I, pp. 102, 104; Scott, Sec. 2, p. 4; C. Taylor, Sec. I, pp. 169, 193; Hillyer, Sec. 7, pp. 44, 51; DeBorde, Sec. 4, p. 157).

(b) Deposits and Depositors.

At the time the books of the Commercial were brought down to the American's building, the accounts with the Commercial's depositors were kept in two books, marked A-K and L-Z. These books were continued in use, and entries of deposits and withdrawals made on
162 them by Commercial employees. The savings accounts were contained and kept in another book and in a similar manner.

A depositor of the Commercial coming to that part of the American's banking room used by the Commercial was requested by the paying teller of the Commercial to leave his pass book so that his account could be verified. The correct balance to his credit having been ascertained, the depositor would draw his check as usual upon the Commercial National Bank for his balance. If the check was for a small amount and the Commercial had the cash on hand, the check was cashed at the Commercial's paying teller's window. If the check was for a large sum, or the Commercial did not have the cash with which to pay it, the check of the depositor was O. Kd. by E. M. Lewis, cashier, or a teller of the Commercial, and the depositor told to present it for payment at the paying teller's window of the American National Bank. This was the usual way of withdrawing deposits from the Commercial, but some times a check in favor of the depositor for his balance was drawn on the American National Bank by Lewis, cashier of the Commercial, and this check given to the depositor. When a depositor checked out his balance

with the Commercial, he was requested by some employee of the Commercial to deposit the amount with the American.

Daily settlements were made between the two banks, in the manner following: The American would furnish to the Commercial all checks drawn by depositors on Commercial and paid by the American, together with a list thereof, giving total amount. The list and checks were verified by the Commercial's employees, and a check was drawn on the American for the total amount, by the Commercial, signed by Lewis, Souder or a Commercial teller, and given to the American in settlement for the checks so paid by the American. The returned checks were then charged on the books of the
163 Commercial to the accounts of the depositors who had drawn the checks. The check given to the American by the Commercial in settlement was charged on the books of the American to the account of the Commercial. (Souder, Record, Sec. I, pp. 101-4) (DeBorde, Sec. 4, pp. 147, 148, 160).

The Commercial accepted deposits from its customers when they were not ready to transfer their accounts or wished to make deposits to meet outstanding checks, but no deposit accounts were opened with new customers. DeBorde acted as receiving teller and at night turned over the deposits received to the paying teller of the Commercial. (DeBorde, Sec. 4, pp. 146-7, 150).

The book kept by the receiving teller shows that deposits were made from August 3rd to 7th, as follows:

| | |
|---|---|
| August 3 | 8,163.70 |
| August 4 | 3,433.31 |
| August 5 | 4,878.66 |
| August 6 | 5,364.12 |
| August 7 | 616.39 |

At the close of business on August 7th, the receiving teller's book of the Commercial was closed, and the work of that teller consolidated with that of the paying teller of the Commercial. Other deposits were thereafter made, the last one being on September 8, 1914. (Souder, Sec. I, p. 120).

Under date of November 16, 1914, and December 15, 1914, the deposits remaining on the books of the Commercial, in small and inactive accounts were transferred to the American by checks drawn in favor of that Bank, and signed by Lewis, cashier, and DeBorde, teller, and the amount credited to the Commercial. DeBorde says this was done at the direction of E. C. Scott, cashier of the American. (Souder, Sec. 1, pp. 135-6; DeBorde, Sec. 4, p. 154, Checks, 711, 751.)

164 (c) Loans and Discounts. Some Made After August 1st. Collection of Those Made Before August 3rd.

The Register of Loans and Discounts of the Commercial was continued in use after the removal of the American, and shows 38 entries of loans and discounts made between August 3rd, 1914, and January 8, 1915, with a total in amount of $93,434.71. This book was kept by the Commercial's employees until January 1st, 1915, after which time it was kept by Karsten, an employee of the American. None of the above loans and discounts appear to relate to business with new customers. At least seven of the loans were made to customers having overdrafts at time of removal, which were closed by demand notes and entered on the register under this head. Several items appearing as cash items at time of removal were later treated as loans and entered as such on the Register. The other entries relate to settlements

with customers in which the Commercial advanced money or extended credit, and not to new business. (Statement attached to Sec. 8; C. Taylor, Sec. 1, p. 181; DeBorde, Sec. 4, p. 179).

This register contained a record of the loans and discounts of the Commercial at the date of the removal to the American. They amounted at that time to $1,150,376.34. The book kept by the Commercial and known as the "domestic tickler" shows the paper due day by day beginning August 1st. A great deal of the work done by the employees of the Commercial, assisted by Mr. L. P. Hillyer, Hansell Hillyer and P. D. Karsten of the American was in connection with the collection of these loans and discounts.

As the notes were paid, an entry to that effect was stamped on the register. All notes were held by the Commercial until paid in some way, and until paid remained open on the books of the Commercial. (DeBorde, Sec. 4, 157, 160, 162, 167). If a note "disappeared out of the assets of the Commercial National Bank it only got out by two methods—either charged off to profit and loss or paid." (Dure, Sec. 4, p. 9).

W. T. Anderson and Leon S. Dure, both members of the finance committee of the Commercial, had loans with the Commercial at the time of the removal to the American. They testified as to how their loans were handled by the Commercial.

L. S. DURE testified:

"Q. This is an audit of the Commercial National Bank that you held as chairman of the stockholders' committee?

A. Yes, sir.

Q. —going through here I find marked opposite these papers, all along here, under the head of "Loans and Discounts" "Paid," opposite the amount of the notes.

A. Yes, sir.

Q. Do you mean by that that this paper was paid or that the paper was turned over by the Commercial National Bank to the American, or does the word paid mean both, so far as that is concerned?

A. It means they were paid; it does not necessarily mean that they were taken over by the American National Bank.

Q. Here is all you do recall—on the line opposite here, Leon S. Dure—these are marked "paid"?

A. Yes, sir.

Q. Does that mean, Mr. Dure, that they were paid and that the Commercial got the money, or that an arrangement was made with the American National Bank to take over the debt?

A. So far as the books of the Commercial National Bank were concerned it was paid; the American National Bank furnished me the money—I don't object to saying that.—Some of those I paid without their assistance and others I did not." (Dure, Rec. Sec. 4, p. 103-4).

166 Mr. Anderson referring to his loans testified that his papers were held just in the shape they were when the Commercial National Bank had them until he made his own arrangements to handle them otherwise, and further than in meetings he had

heard R. J. Taylor and L. P. Hillyer state that "they were willing to handle this or that account if something could be done to put it in shape." (Sec. 4, pp. 1.5-6).

Reference will be hereafter made to activities of the stockholders committee with reference to collections, suits filed and settlements made.

(d) Other Books and Records.

Mail Tellers Cash Book No. 7.

The mail teller of the Commercial had on August 3rd. remittance letters of $42,580.27. These contained items for collection and for credit to accounts of other banks. Of these, checks amounting to $32,100.00 were mailed out by the Commercial's employees "all over Georgia for collection as cash items. The other items were handled through the Macon Clearing House. August 4th was the last day the mail teller did business, and he handled that day items amounting to $15,774.20. Notices had been mailed out that the Commercial would not handle such items any more as the bank was going out of business. (Souder, Sec. 1, p. 115, and Book).

(e) Collection Teller's Cash.

This book shows the following entries:

| | |
|---|---|
| August 3 ..... | 4,243.79 |
| August 4 ..... | 1,085.00 |
| August 5 ..... | 8,025.23 |
| August 6 ..... | 84.99 |
| August 7 ..... | 310.40 |

At the conclusion of business on the 7th, the collection teller's book was consolidated with the paying teller's book, and collection teller's book closed.

167 Paying Teller's Cash.

This book of the Commercial was continued after the removal to the American and until September 30th, 1915. At the close of business on August 7th, the books kept by the receiving teller, collection teller, and mail teller, were closed, and their business consolidated with that of the paying teller and entered on his book. To show the character of the entries of business, the items under date August 7th, 1914, are given:

| | | | |
|---|---|---|---|
| Cash | 10,281.36 | Savings checks | 6,932.17 |
| Saving Deposits | 300.00 | Individ. checks | 17,520.59 |
| Individ. Deposits | 617.38 | Gen. Ledg. charg. | 69,825.19 |
| Loans paid | 310.40 | | |
| Exchange | 23.40 | | |
| Gen. Ledg. Credits | 88,861.29 | Cash on hand | 6,116.10 |

(Souder, Sec. 1, p. 120, and books).

## General Ledger.

A general ledger was kept by the Commercial, showing general bank accounts, accounts with country banks, individual accounts, national bank notes outstanding, interest, exchange, teller's cash, individual and savings deposits, time certificates, cashiers' checks outstanding, certified checks and bills payable. On this book, beginning August 3rd, an account was carried with the American National Bank. The ledger in use until

December 31, 1914, was No. 8, and the last entry on that day in the account with the American National Bank indicates a credit balance in favor of that bank of $303,842.35. Entries were continued in General Ledger No. 9. (Ledgers.)

168 Miscellaneous Check Book.

This book had been used by the Commercial in drawing on banks for which it did not have separate registers. The entries made after the removal to the American cover the period from August 3rd to 13th, and shows about twelve checks drawn by the Commercial, signed by Lewis and Souder, in favor of the American, and on banks in which the Commercial had deposits or balances. These checks were deposited with the American to the credit of the Commercial. (Souder, Sec. 1, p. 135, and checks).

Expense Register.

The expenses of the bank, and of the bank building, continued to be kept in a book known as the expense register, until December 31, 1914. Checks for the payment of expenses, such as salaries of the Commercial employees, Lewis, cashier, Souder, assistant cashier, as well as for ice, coal, towel supply, etc., for the building, were paid by checks drawn on the Commercial National Bank signed by Lewis, DeBorde or Souder, and paid by the American National Bank on presentation. These checks issued after August 1st were O. Kd. by an officer of the American National Bank. Total expenses through December, 1914, were $4,673.07. (Souder, Sec. 1, p. 107, and register).

## Statement Book.

It is customary in the banking business to close the books each day and enter the general ledger totals on a Statement or President's Book. This book shows the condition of the bank at the close of each day's business. Such a book was kept by the Commercial and was continued to be kept from day to day until September 30, 1915. In this book under the head "Due to other National Banks" was placed the total of the sums due other national banks, according to the books of the Commercial, and included in such daily total was the amount which the account of the American on the general ledger of the Commercial indicated that the Commercial was due to the American. For instance, the Statement Book showing condition of the Commercial on September 30th, 1914, has under the head of "due to other National Banks" the entry, $493,416.51. Reference to the account of the American on the Commercial's general ledger of that date, shows that to be the amount apparently due to the American. DeBorde kept the statement book and "turned it over to (L. P.) Hillyer, or somebody," each night. (Souder, Sec. 1, pp. 148-151; DeBorde, Sec. 4, p. 190).

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## Monthly Statements of Account Between American and Commercial.

It is customary for banks carrying accounts of other banks to render monthly statements, just as banks usually render to their customers. Statements of this character were furnished by the American National Bank to DeBorde of the Commercial. Drafts or checks of the Commercial paid by the American were returned with the statements, together with what are called re-

concilements sheets. The statements were verified by the Commercial's employees and any errors noted on the reconcilement sheet, which was returned to the American for adjustment. These monthly statements were submitted from August, 1914, to March, 1915, inclusive, and after DeBorde left on December 31, 1914, were delivered to Karsten, an employee of the American who was at that time in charge of the book keeping and collections of the Commercial. The statements show month by month the amount apparently due the American by the Commercial. The amount on August 31, 1914, as shown was $495,083.99, and on September 30, 1914, $492,962.03. (Souder, Sec. 1, pp. 153-4. Scott, Sec. 4, p. 15). According to Mr. Scott, cashier of the American, these monthly statements were the originals of the account as kept by the American, copies being retained for the American's record.

170 Clearings.

From August 3rd to 7th, inclusive, the Commercial had a representative at the meetings of the Clearing House, and items on the Commercial National Bank were handled just as items on any other bank were handled, cleared in the regular way; they cleared their own checks on other banks, and the other banks would make separate settlement with the Commercial National Bank for checks they had against them." (Scott, Sec. 2, p. 13, Souder, Sec. 1, p. 127). On the 7th, two checks were drawn against the Commercial for balances due on clearings. One read in substance: "The Commercial National Bank will pay to the order to the Fourth National Bank $21,543.97, (signed) Macon Clearing House Association, by G. C. McWhirter, Assistant Manager." (Checks in evidence).

Draft Registers.

Where the Commercial had active or considerable accounts with other banks, it had a draft register for each of such banks, the register containing printed forms of checks or drafts ready to be filled in by the Commercial.

One such register was used in making drafts on the Coal & Iron National Bank. This shows that from August 3rd to 7th, the Commercial drew seventeen drafts on that bank. These were drawn "in settlement of collections made by the collection teller." (Souder, Sec. 1, p. 128, and register).

Another such register was that used in drawing drafts on the National Bank of Commerce of New York City. This was discontinued so far as the National Bank of Commerce was concerned, and beginning August 3rd, 1914, was used as a Draft Register for checks drawn on the American National Bank, the name of the latter bank being stamped over the name of the former on the blank drafts.

171 (n) Checks Drawn by Commercial on American.

Beginning August 3rd, 1914, the Commercial National Bank drew its checks on the American National Bank from time to time. For this purpose the draft register just above described was used, and the checks drawn are numbered from 401 to 765. The checks aggregate $1,100,132.19, and are in evidence. The first check is signed by E. Y. Mallary, president, others are signed by E. N. Lewis, cashier, R. C. Souder, assistant cashier, and some by E. N. Lewis, cashier, and J. M. DeBorde, teller. These checks after being presented to and paid by the American National Bank were returned as can-

celled checks to the Commercial's force. The American, on its books, charged the checks to the Commercial's account.

(Souder, Sec. 1, pp. 130-3; Checks, Draft Register, Scott, Sec. 2, p. 16).

(o) Correspondence of the Commercial.

After the removal to the American National Bank, E. N. Lewis had charge of the general corespondence of the Commercial National Bank, conducting its correspondence with other banks relative to withdrawal of balances and substitution of collateral, with customers in regard to collection of loans, with the Comptroller of Currency, and with stockholders. Between the 3rd and 15th of August, R. C. Souder conducted some of the correspondence. The correspondence and certain of the records at the close of the day's business were carried to the Commercial's building and filed away as formerly. The inactive books and old correspondence continued to be kept at the Commercial's building, the keys to which remained in the custody of the Commercial's officers and employees until turned over to Kersten in January, 1915. (Souder, Sec. 1, p. 99, 156-7; Sec. 7, p. 71-2; DeBorde, Sec. 4, p. 166-7; correspondence).

172 (p) Business Active for About Two Weeks.

For about two weeks beginning with August 3rd, the Business conducted by the Commercial National Bank in winding up its affairs was very active. After that time the business was gradually reduced to that of making collections on loans, settlements and agreements with debtors, filing suits to enforce collections, disposing of

mortgaged real estate, sale of real estate and its banking house.

Disregarding capital stock surplus and undivided profits shown on the Commercial's books as liabilities, by December 18th, 1914, all of the liabilities of the bank had been paid, except the amount due the American National Bank for advances made by it for the payment of liabilities. The Statement Book of the Commercial, showing each day the condition of the bank, under the above date, contains but one entry under liabilities, to-wit, "due to Am. National Bank, $576,785.17" and its resources on that date are shown to be "Loans and Discounts $876,777.55" and banking house, $75,000. After that date the liability to the American was reduced by realization on assets. Early in 1915, the resources were increased by a real estate account of $12,500, and that item was carried on the statement book for some time.

(q) Supervision by American's Officers.

The business of the Commercial while conducted at the Americans' building in the usual and customary way in which it had been conducted at the Commercial's building, the business being limited to that of a bank winding up its affairs preparatory to going out of business entirely, was under the supervision of
173 officers of the American National Bank.

While in active business at the Commercial's building, "the keeping of accounts and detail of handling the business was under the direction principally of Mr. Lewis and under the general control of Mr. Cobb," the active vice-president.

Hillyer, vice-president of the Amreican, and other officers of that bank did not assume to act as officers of the Commercial National Bank.

Lewis was not an officer of the American, and did not assume to act as such.

The checks by which Lewis, Souder and employees of the Commercial were paid for their services were drawn on the Commercial, but the checks were o.ked. by an officer of the American.

As the services of the employees of the Commercial were no longer needed, Hillyer would "let them go."

The employees of the Commercial were not employed as such by the American, and had no connection with the business being conducted under the name of the American National Bank. They were already the employees of the Commercial and their services were not dispensed with until after such employees were no longer needed in connection with the business of the Commercial.

The finance committee of the Commercial did not function after August 1st but it does not appear that the character of the business transacted required the action of a finance committee.

After August 12th, when the American was first appointed liquidating agent of the American, all matters relating to extensions, settlements, etc., and in all matters where the American could not realize the face value of paper, were taken up and acted upon by a committee from the directors of the American, and a shareholder committee from the Commercial, composing a
174 "joint committee."

After August 12th, when it was necessary to collect loans through legal proceedings, such collections were made through the attorneys of the American National Bank.

Answers to letters of certain stockholders asking Lewis, cashier, to transfer certificates of stock, were

dictated by attorneys for the American National Bank. This was also after the 12th of August.

(r) Books of Commercial Continued as Before Removal.

The methods of book keeping and accounting in use by the Commercial prior to removal to the American's building was continued after August 1st. On August 3rd an account was opened with the American on the ledger of the Commercial just as an account would have been opened with any bank with which the Commercial began to do business at any time prior to August 1st.

(10). Methods of Book Keeping.

In case of an ordinary sale of assets by one bank to another, with no obligation to account for over-plus realized, proper book keeping would require that all accounts of the selling bank be transferred to the books of the purchasing bank, and assuming that all assets have been sold, no more entries should be made in the books of the selling bank.

In case a bank is liquidating through a liquidating agent, and reporting quarterly to the Comptroller of Currency, it would be necessary to keep a record of all transactions, but such record need not be as voluminous as in the instant case.

175 If the affairs of the Commercial National Bank were being administered by the American Bank under a plan or agreement whereby after the administration had been completed, the over-plus remaining after realizing on the assets and paying all the liabilities and expenses of administration was to be payable to stockholders, the system of book keeping in use by the Commercial would enable the details of all trans-

actions to be correctly kept, and accurately show the result of the liquidation. If the American was the purchaser of the assets, and they were being administered as the assets of the Commercial through the American as liquidating agent, and the liquidation agent being under obligation to wind up the business of the Commercial and make quarterly reports to the Comptroller, the system of book keeping already in use by the bank would be the natural one to continue in use. In either case, however the account kept by the banks, the one with the other, showing one as debtor and the other as creditor, would be mere memorandum accounts, and only as to the amount shown, whether an overplus or a deficit, would the account be correct.

(Sec. 1, pp. 193-5. Sec. 4, pp. 65-6. Sec. 3, p. 31).

(11) The Commercial's Account on the American's Ledger. The Overdraft. Reports.

(a) Account.

The account with the Commercial National Bank was kept on the bank ledger of the American National Bank, like accounts with other banks were kept, by debiting charges and crediting deposits. At the close of the day's business the checks which had been drawn by customers on the Commercial National Bank and paid by the American National Bank were settled for by a check of the Commercial drawn on the American.
176 This check was charged to the Commercial's account on the American's ledger.

The collections and receipts of the Commercial were from time to time deposited with the American National Bank to the credit of the Commercial National Bank, and entered on the ledger account as credits.

The ledger of the American is a loose-leaf book, and the account with the Commercial was kept in duplicate. The original referred to as "statement" was turned over to the Commercial monthly, usually to de-Borde, and the duplicate retained by the American and transferred to its ledger binder.

The said first entry on the statement for August. 1914, is under date August 3rd, "D" 402 $10,315.90." This means that a draft for that amount had been drawn by the Commercial on the American, paid by the American, and charged to the Commercial on the American's ledger.

Most of the charges consist of drafts of this character.

On the credit side of the statements and ledger appear the entry of deposits made by the Commercial from time to time, beginning with three deposits on August 3rd, 1914. These represent collections or receipts of the Commercial.

The deposits were made by the Commercial on regular deposit slips of the American National Bank such as used by its customers.

The account on the ledger of the American is the only account with the Commercial appearing on the books of the American.

The daily totals shown on the bank ledger were entered on the general ledger of the bank, under line 21, "due from banks." After December 7, 1916, at which time the Citizens and Southern took over the American, the totals from the bank ledger were entered on the general ledger separately as "due by Commercial National Bank."

177 (b) Overdraft.

The account of the Commercial on the ledger of the American National Bank showed a balance due by the

Commercial National Bank, representing the difference between the amounts deposited to the credit of the Commercial and the amounts advanced by the American to the Commercial, on its drafts, and charged to the Commercial. This overdraft against the Commercial varied in amount from day to day according to the amounts advanced by the American and the amounts deposited by the Commercial. The ledger account on March 28, 1919, showed a debit balance against the Commercial National Bank of $302,581.70.

The account with the American appearing on the ledger of the Commercial on the same day shows a credit balance in favor of the American of the same amount, or an indebtedness of the Commercial to the American in that amount.

The drafts drawn by the Commercial on the American for advances are in evidence. Many of them indicate the particular liabilities of the Commercial paid by the American by honoring the drafts.

(Scott, Sec. 2, pp. 2, 6, 11, 12, 14-19, 21, Drafts, ledgers, statements).

(c) Statements to the Comptroller.

The American National Bank made reports to the Comptroller of Currency as called for from September 12, 1914, to November 27, 1916. In the first two or three reports the balance or "overdraft" against the Commercial, as shown by the American's books was reported as "Due from Banks." In subsequent reports, it was included under "Loans and Discounts."

The American as Liquidating Agent made reports for the Commercial.

178 Action Taken by Stockholders' Committee from Commercial and Directors' Committee of American.

Under a resolution of the Board of Directors of the American National Bank, under date August 7th, 1914, R. J. Taylor, president of that bank, was authorized "to appoint a committee of three as an advisory committee to assist him in looking after the affairs of the Commercial National Bank of Macon, which bank was absorbed by the American National Bank." O. A. Park, W. P. Lee and L. P. Hillyer were appointed on that committee. (Record, Sec. 1, p. 49).

The stockholders of the Commercial National Bank at their meeting of August 12th, 1914, adopted a resolution reciting that a resolution having been passed appointing the American National Bank liquidating agent, "therefore be it resolved that this meeting appoint L. O. Benton, J. F. Lewis, Leon S. Dure, W. T. Anderson, and John J. McKay a special committee of five who shall serve as a special stockholders' committee representing the stockholders, whose duty it shall be to serve with the board of directors and who shall be consulted before any final action is taken by the board of directors on all matters relating to the said liquidation by the said American National Bank, compensation to be later determined by the board of directors." (Resolutions August 12th, Record, Sec. 1, p. 22).

At the stockholders' meeting of September 30th, 1914, the action of the stockholders at the meeting of August 12th, was ratified, and a resolution adopted appointing the same persons a committeee "to act with the directors of the said Commercial National Bank and with the American National Bank in liquidating the assets of the said Commercial National Bank and that the di-

rectors of said bank take no final action in the matter of liquidation without consulting said committee." (Sec. 1, p. 34).

179 The stockholders committee of the Commercial organized with Leon S. Dure, chairman, and J. J. McKay, secretary. The stockholders' committee and the directors' committee from the American met and organized what was known as the Joint Committee, with L. P. Hillyer, chairman, and J. J. McKay, secretary. Minutes of the Joint Committee were frequently held, and the nature of the action taken by them will appear from the minutes, which will now be referred to.

The first stockholders' committee meeting was held on August 12th, and following action taken: "that $300,000.00 of bonds belonging to the bank be sold; that no expenses be incurred in the matter of the liquidation of the bank without the approval of this committee, and that a copy of this resolution be furnished respectively to the American National Bank and the Commercial National Bank; that no salaries be paid officers of the bank from August 1st, 1914; that the chairman request financial statements from Mallary Mill Supply Company, (and others); and that the chairman take in charge the matter of renting the banking house and offices in the bank building." (Record, Sec. 1, p. 59).

On August 26th, 1914, a joint committee meeting was held. It is described in the minutes as a joint meeting of the stockholders' committee of the Commercial National Bank and directors' committee of the American National Bank "as liquidating agent." Mr. R. J. Taylor stated "that he had requested Mr. Hillyer to take particular charge of the Commercial National's af-

fairs and the collection of the outstanding notes held by them." The minutes recite, "it was understood that chairman Hillyer will call together a joint committee of these committees to confer and determine the course to be pursued in connection with any claims that he may not be able to satisfactorily handle." Mr. Hillyer was authorized "to place in the hands of attorneys
180 for collection the past due notes of Herbert F. Haley," and the "sale by the liquidating agent, as of August 1, 1914, of United States Government bonds" was approved. (Sec. 1, p. 63).

Meeting of joint committee of August 28th. Chairman Dure stated the object of the meeting was the consideration of claim by the Central Trust Company to ownership of $50,000.00 of bonds of the Beechwood Farms and $50,000.00 of bonds of the Security Investment Company "which are held by the Commercial Nation Bank." "E. N. Lewis, as cashier of the Commercial National Bank and custodian of its assets, stated that he had no understanding of the Central Trust Company's interest in the Beechwood Farms bonds." The settlement of this controversy will be referred to hereafter. (Record, Sec. 1, p. 67).

Meeting of joint committee held September 15th, 1914. The minutes state, "Mr. Taylor presented for consideration the indebtedness of the J. W. Burke Company, and W. T. Anderson suggested the advisability of himself seeing Mr. Burke and looking into his affairs with a view to some report later to the committee on which would be based some arrangement for settlement." Mr. Taylor further called attention to the indebtedness of the Jesup Trust Company and J. L. Jesup, whereupon chairman Hillyer was requested to call on those parties for detailed information as to their assets and collaterals and undertake to make an ar-

rangement whereby their indebtedness to the bank could be reduced gradually and possibly by monthly payments. (Sec. 1, p. 70).

A meeting of the stockholders' committee of the Commercial National Bank was held at 3:30 P. M., September 30th, 1914, Dure elected chairman and McKay secretary and all previous acts of the committee were approved. The chairman was requested to ask the American National Bank for a statement of expenses to date in connection with the liquidation of the Commercial National's affairs." (Sec. 1, p. 71).

At a meeting of the joint committee held on October 12th, 1914, the following action was taken. The
181 Williams Wagon Works was allowed to make payment of $500. on indebtedness and extension for 60 days granted on balance. Action of liquidating agent in accepting $500. in full settlement with Dave Snetman approved. The chairman appointed a committee to go through the assets of the Capitol Savings Bank so that the joint committee could determine what action, if any, should be taken. Mr. Park read a typewritten agreement to be made between the Central Trust Company, Commercial National Bank and American National Bank as liquidating agent, whereby an equitable settlement could be effected touching the claim of Central Trust Company of interest in bonds or securities of the Beechwood Farms Company, the Security Loan and Investment Company, and other concerns allied with them and with T. C. Parker. Authority was given to execute the proposed agreement. (Sec. 1, p. 72).

Minutes of Joint Committee held October 21, 1914, show that "Mr. Joel A. Smith requested that his note of $1300. be held for a short time, offering to give mortgage on property in Dublin to secure same, which

was agreed to by the committee." Extensions to other debtors were approved. (Sec. 1 p. 74).

At the joint committee meeting of November 4th, 1914, the proposition in regard to settlement of J. W. Burke Company indebtedness was approved; W. T. Anderson stated that his note due November 2, 1914, would be taken care of within the next 30 or 45 days; Hansell Hillyer was directed to see the indorsers of certain notes. (Sec. 1, p. 78).

At joint committee meeting held November 27th, "approval was given to the sale for $4500. of a certain house and lot on Forsyth Street in Vineville which was held under second mortgage by the bank against Mr. S. C. Moore, the proceeds of same, less the first mortgage encumbrance, to be paid to the bank." (Sec. 1, p. 81).

182 At the joint committee meeting held December 2, 1914, the minutes of all previous meetings were read and approved; approval was given to sale of lot on Forsyth street known as 604 Forsyth St., and the officers of the Commercial National Bank were authorized to execute proper quit claim deed, letter of E. P. Mallary relative to this sale submitted; settlement with Security Loan and Abstract Company approved; this included the giving of two notes to Commercial National Bank by J. J. Cobb as maker. (Sec. 1, p. 82).

From the minutes of joint committee meeting of December 16th, 1914, the following excerpt is taken:

"Mr. E. L. Martin had before the committee the matter of the indebtedness of himself and Mrs. Martin and after full discussion of the matter the following motion was offered by Mr. Anderson and carried

'that the Commercial National Bank has no authority to submit any proposition in the matter, as the notes of both Mr. and Mrs. Martin having been passed to the American National Bank and suit having been filed on the same.'" (Sec. 1, p. 85).

At the joint meeting held December 18, 1914, Dure reported that W. E. Small had offered to convey to the bank his residence on College Street at a valuation of $12,500. and pay the balance in cash, which offer was accepted. Certain notes were placed in the hands of Hardeman, Jones, Park & Johnston, attorneys, for collection. (Sec. 1, p. 86).

Excerpt from minutes of joint committee meeting held April 6, 1915:

"A full list of all notes in the hands of attorneys for collection and those in the hands of the bank was submitted and carefully gone over; the desirability of selling the American National Bank all of the unpaid notes at an agreed valuation was discussed at some
183 length, and it was decided that the committee from the Commercial National Bank would consider the matter of placing a value on the separate items with a view to recommending to stockholders that this plan be adopted."

The minutes of the joint committee show that action was taken by the committee from time to time on matters similar to those referred to above.

Two contracts approved by the stockholders committee are set out in the record, Sec. 7, A-1-A22. One is dated August 31, 1914, and among the contracting parties are the Commercial National Bank, and the American

National Bank as liquidating agent. This relates to the indebtedness of T. C. Parker and his corporations, and by it T. C. Parker transfers the stock owned by him in his various corporations to George S. Jones, as trustee, for the benefit of certain creditors. The second contract is dated October 24th, 1914, and the contracting parties are the Commercial National Bank, the Central Trust Company, T. C. Parker and the Continental Trust Company. This relates to an equitable apportionment of collateral between the banks named.

(13). Suits Filed by and Against the Commercial. The Attorneys at Law.

(a). Suits Filed in Name of American National Bank.

In November, 1914, the American National Bank, through its attorneys-at-law, Hardeman, Jones Park & Johnston, filed to the December Term of the City Court of Macon, fifteen suits for the collection of notes originally payable to the Commercial National Bank. The suits allege that the notes sued on have been duly transferred to the American National Bank by the Commercial National Bank, and as to each note the
184 allegation is made that the American National Bank "is the holder and owner of said note for value before maturity."

A similar suit was filed by the American National Bank in November, 1915, to the following December Term of the City Court against the Southland Knitting Mills, on notes aggregating $13,905.04.

The notes sued on in the above suits constituted a part of the notes which have been referred to in this report, for identification, as the "Commercial's assets." (Record, Sec 3, p. 72-77).

(b) Suits filed by or against Commercial in Superior and City Courts.

After August 1st, 1914, eight suits were filed by or against the Commercial National Bank in the Superior Court of Bibb County. Of these, four were filed by persons who were directors or stockholders of the Commercial against the Commercial National Bank, et al., to-wit, by W. T. Anderson, Leon S. Dure, L. O. Benton and John J. McKay. Four suits were filed by the Commercial National Bank on notes payable to said bank. The latter being filed in the City Court. (Record, Sec. 7, b-12-13).

(c) Bankruptcy petitions and claims filed by Commercial.

The Commercial National Bank appears as a petitioning creditor in two involuntary petitions in bankruptcy, one filed August 21, 1914, against J. H. Virgin, verified by E. N. Lewis, cashier, and the other filed November 14, 1914, against Mallary Mill Supply Company, and verified by J. J. Cobb, vice-president.

Claims aggregating $269,783.89 were proved in the name of the Commercial National Bank in eight bankruptcy cases.

In the two involuntary petitions and in filing the claims, the Commercial National Bank was represented by Hardeman, Jones Park & Johnston, as attorney-at-law. (Sec. 7, p. c-1).

185 (d) The Patterson Suit.

On November 3rd, 1914, Albert L. Patterson and J. W. Payne, two stockholders of the American, filed a bill for injunction and receiver, in the United States

Court at Macon, against the Commercial National Bank, its directors and members of the stockholders' committee. An answer was filed by the defendants, and excerpts therefrom are to be found in References to Evidence herein. The Commercial was represented by its counsel, A. W. Lane, and the American National Bank, a joint defendant, by Hardeman, Jones, Park & Johnston, its attorneys.

(14) Conveyance of Real Estate and Bank Building.

The Commercial National Bank at various times, through a period of two years made conveyances of real estate, the consideration amounting to many thousands of dollars. Some of the sales were to the American and some to other parties. It took conveyances, both absolute and as security. In a settlement with W. E. Small, his home was purchased at a valuation of $12,500. and some time later purchased by the American for $10,000.00.

By deed dated July 10th, 1916, the Commercial National Bank conveyed its banking house to the American National Bank at a valuation of $40,000.

The building has been offered for sale through real estate dealers, and also after advertisement at public outcry. No satisfactory offers having been made, the building was purchased by the American National Bank. (Rec. Sec. 7, b-7. Sec. 1, p. 91).

186 Notes Not Given by Commercial National Bank. Balance Carried by American for Convenience. No Agreement with Commercial's Officers.

Referring to that part of the Resolutions of the American (Exhibit C. this Report, p. 6) providing, among other

things, for the transfer of assets of the Commercial "as collateral for its notes, etc.," the evidence shows that notes were not given to the American National Bank by the Commercial National Bank, but that the amount advanced by the American to pay the liabilities of the Commercial, insofar as it exceeded from day to day the amount received from the Commercial as collections and sale of its assets was carried on the books of the American National Bank as an overdraft against the Commercial National Bank. On the books of the Commercial National Bank this amount appeared as an indebtedness due by it to the American National Bank.

There was no agreement between the officers of the American National Bank and the officers and finance committee of the Commercial National Bank that the amount so advanced by the American should be carried by the American National Bank as an overdraft of the Commercial.

The testimony of Mr. Scott that such an agreement was had with Mr. Lewis, Cashier of the Commercial National Bank, is inadmissible, Mr. Lewis, the opposite party to the transaction, being dead at the time the evidence was offered. (Sec. 7, pp. 18-20).

It is true, however, that from August 3rd to October 31st, 1914, E. N. Lewis, cashier of the Commercial, and immediately in charge of the accounting of the Commercial, must have known that according to the books of the Commercial the amounts so advanced by the American were entered on the books of the Commercial as amounts due by it to the American.

The following testimony is referred to as
187 supporting the above finding:

R. J. Taylor, testified, (Sec. 8, pp. 20-1):

Q. In making the arrangements, working out the arrangements between the two banks, the details of handling the accounts and so forth, do you know who represented the Commercial National Bank, who was the active man for them?

A. Well, Mr. Nat Lewis, I suppose, he was really the leading man.

Q. Was there or not any discussion between the officers of the American and the officers of the Commercial with regard to notes to be given by the Commercial to the American?

A. Well, it was my understanding that the matter would be closed by note.

Q. Do you know why notes were not given?

A. No, sir, I do not recall, I cannot say.

Q. Do you remember whether the matter was discussed with Mr. Lewis or not?

A. No, sir, I do not remember that."

E. C. Scott, testified, (Sec. 7, pp. 21-2, 31-3):

The account was carried on the books of the American as an overdraft, "just as a matter of convenience, to show the details of the transactions from day to day, and on that account was entered the debits and credits each day just as they occurred. That was done as I stated, more as a matter of convenience and to get a more detailed accounting of each day's transactions than would have appeared had we taken a note, and for the purpose of more accurately arriving at the daily balance at the close of each day's business, that was necessary for the purpose of computing interest on daily balances."

Cross Examination.

"Q. For the purpose of accounting—showing how the accounting stood—you got checks from Mr.
188 Lewis every night, didn't you?

A. Yes sir.

Q. But you could have accomplished the same thing by a note as by a check?

A. It could have been done.

Q. And if Mr. Lewis had been absent you could have gotten a note as well as a check when he got back?

A. You would have been confronted by this; you would not have put through loans and discounts notes which had not been signed—it would have been a little irregular—

Q. You did put through loans and discounts items that were not in the shape of notes. This so called overdraft you did?

A. Yes, sir.

Q. Isn't that a thing unheard of; you never had such an overdraft as that on your books in the history of the bank?

A. Yes; we had at one time carried loans on a basis of that kind. In some seasons of the year cotton accounts run up to amounts larger than that. We had a regular cotton book, where we carried them—as loans. They were entered on the books in the shape of overdrafts; they were carried as loans.

Q. That is a rather unusual situation, as compared with the regular way of doing a banking business?

A. Yes, sir, it is not ordinary.'

L. P. Hillyer, testified, (Sec. 7, pp. 42-3):

"Q. How was the account between the two banks kept, Mr. Hillyer?

A. My recollection is when I got back from New York I found it running as an overdraft on the American National Bank's books. I preferred to keep it that way. When the final settlement came we would be in much better position to calculate what the Commercial National Bank owed us; in other words, we would not have such an interminable mass of notes
189 interest calculations and that sort of thing: it was simply the easiest way to carry it in my judgment. I thought it was easier to work out the interest on the overdraft plan."

The testimony of E. Y. Mallary, president, and Leon S. Dure and W. T. Anderson, of the finance committee, testified in effect that they were not consulted as to the giving of notes by the Commercial or as to carrying the account as an overdraft by the American, and made no agreement with reference to either matter.

16. The Commercial's "Circulation" Assumed by American, U. S. Deposits Transferred.

The American National Bank passed a formal resolution assuming the circulating notes of the Commercial National Bank, and after the shareholders of the Commercial National Bank had voted on September 30th, 1914 to place the bank in liquidation, the bonds of the Commercial securing its circulation, which under a resolution of the stockholders' committee had been sold to the American, were transferred from the account of the Commercial to the Treasurer of the United States in trust for the American. (Letter of Comptroller, Sec.

7, p. 136). In a letter from Cashier to the Comptroller of Currency, dated August 14, 1914, the cashier of the American states that he had already forwarded copy of resolution assuming the liability of the $200,000. of circulation of the Commercial, and asking that the Comptroller transfer to the credit of the American's redemption fund "the five per cent redemption fund of the Commercial." The Comptroller writes to the Cashier of the American, August 31, 1914, that the bonds have not been withdrawn from the account of Commercial and re-deposited to account of American "by reason of the informality of the liquidating proceedings."

190 Deposits of money by officers of the United States continued to be made with the Commercial National Bank for a few days after August 1st, that bank being a general depository. On August 13, 1914, the Cashier of the American National Bank writes to the Comptroller of Currency, as follows:

"We beg to advise further that we have taken over the Government moneys which were held on deposit by the Commercial National Bank, in pursuance of the appointment of this association as a general depository." (Sec. 7, p. 93).

(17) Assets not Realized Upon.

During the years 1915 and 1916 the members of the stockholders' committee of the Commercial frequently discussed the disposition to be made of the "assets that had not been charged out of the assets of the Commercial National Bank,—that is the paper that had not been paid."

The matter was discussed with Mr. Taylor of taking over the remaining assets but no valuation was ever agreed upon.

Mr. Dure says, "We had there an embarrassing proposition like that of the bank building—we did not know what value to put on them." (Dure, Sec. 4, pp. 99, 100).

By the end of the year 1914 the losses already ascertained made it certain that there would be no over-plus of assets above liabilities to be turned over to the shareholders of the Commercial National Bank. (Sec. 4, p. 123, Anderson).

191 (18) Resolution Authorizing Sale of Bank Building.

A copy of a resolution purporting to authorize the sale of the Commercial National Bank's banking house is attached to the amendment to plaintiff's bill as Exhibit D., such copy stating that the purchase price of $40,000.00 was "to be credited on the indebtedness of the Commercial National Bank to the American National Bank."

A resolution was adopted authorizing the sale of the banking house to the American National Bank, but the original resolution does not appear on the minutes of the Board of Directors, was not offered in evidence, and there is no evidence that the resolution authorizing the sale contained the language quoted above.

A paper purporting to be a copy of the original resolution was produced at the hearing by Mr. Park, attorney for the plaintiff, who stated that it was a carbon copy of a resolution prepared by him and given to Mr. Taylor, president of the American National Bank, to be submitted to the Board of Directors of the Com-

mercial National Bank. The carbon copy is identical with Exhibit D. Certain witnesses, were questioned about this carbon copy.

E. Y. Maliary testified, "No, sir, I do not remember it. I know we did first have a meeting as I have stated, and finally got a quorum (of the directors) to approve the resolution presented by Mr. Taylor, to sell the building, the approval of that; any further than that, I do not remember now. (Record, Sec. 4, p. 55). R. J. Taylor's recollection is "not clear" as to the directors meeting. (Record, Sec. 8, p. 27). Mr. Dure was asked as to the contents of the resolution adopted, and replied, "No, sir, not the exact verbage. The chances
192 are that I would not have paid much attention to the verbiage of the resolution beyond the fact that it was transferring the building at a certain figure." (Record, Sec. 5, p. 50).

(20) Resources of American on July 31st.

The Resources of the American National Bank on July 31, 1914, as shown by its books were $3,792,488.79. (Rec. Sec. 4, p. 1).

(21) Agent and Attorney of American Not at Shareholders' Meetings.

Referring to the allegations of answer of defendants that an attorney and agent of the American National Bank was present at the shareholders' meeting of the Commercial on August 12, 1914, and acquiesced in or consented to the statement of the attorney for the Commercial as to the effect or meaning of the clause in

paragraph VI. of the Contract relative to shareholders' statutory liability, I find

No agent and attorney of the American National Bank was present at the meeting of the shareholders of the Commercial on August 12th or at that on September 30th.

(No evidence to support the allegation, Mr. Park, attorney, stated he was not present).

(22) Indictment of Certain Officers of Commercial.

In May, 1915, indictments were returned in the United States District Court, against E. N. Lewis, E. Y. Mallary, J. J. Cobb, F. L. Mallary, E. N. Jelks and T. C. Parker, for a violation of the National Banking Act, in connection with the Commercial National Bank. A trial was had on one of the indictments and the defendants acquitted.

193 (23) Assets Transferred To American as Purchaser or as Security? Writings Evidencing Interpretation of Director's Agreement.

In considering the agreement between the two banks, made by their boards of directors, respectively, and evidenced by the resolutions, with a view to determining whether the assets were transferred to the American as purchaser, or to secure it for advances made and to be made to the Commercial, certain writings indicating the interpretation of the parties are in evidence and material. With regard to the writings, I submit the following facts:

(a) Under date of August 1st, 1914, the Cashier of the American advised the Comptroller of Currency that the Directors of the Commercial National Bank have transferred to the American all of its assets as security for advances, etc. (Letter, p. 22 of this Report).

(b) The Contract between the banks, dated August 11th, recites in the preamble the action of the directors of the Commercial National Bank, as shown by their resolution, to have been the transfer of all the assets of the Commercial to the American "in order to fully protect and secure said American National Bank for all moneys advanced or to be advanced by said association, etc.".

(c) In paragraph 2 of the Contract itself, the Commercial National Bank agrees to procure a proper resolution from its shareholders ratifying and confirming the action of its board of directors, "as herein recited," the action recited in the contract, being that as above stated.

194 (d) Paragraph 5 of the Contract provides that all of the assets of the Commercial are "to be held as security by the American National Bank for all advances made by it in paying depositors, etc."

(e) The resolutions of the stockholders of the Commercial National Bank, adopted on September 30th, recite in the first preamble that the Board of Directors of the Commercial by resolution adopted August 1, 1914, had transferred and assigned to the American National Bank all the assets of the Commercial National Bank as security.

(f) Replying to a letter from the Comptroller of Currency relative to the transfer of assets from the Commercial to the American and the elimination by that bank of all assets improperly taken over as soon as possible, Taylor, president of the American, under date August 14, 1914, writes, "You have been furnished with a copy of the contract between the two associations and the resolutions appointing the American liquidating agent (referring to stockholders' meeting of the 12th) and authorizing it to hold all assets transferred to secure the payment of amounts advanced and assumed by this association. Kindly advise in the light of the contract and resolutions what is meant by the expression "all assets improperly taken over."

(g) On August 19th, 1914, Lewis, cashier of the Commercial, writes to the Comptroller that the assets of the Commercial are now held by the American "as security for all advances to be made and paid on liabilities."

(h) On October 1, 1914, the day after the shareholders meeting placing the Commercial in liquidation, the Cashier of the American writes to the Comptroller of Currency that on August 1, 1914, the Directors of the Commercial transferred to the American "as security for amounts advanced and to be advanced to pay depositors, etc., all of its assets, in contemplation of the voluntary liquidation of that bank; that pending the action of the stockholders the American had "not thought it proper to transfer absolutely and as a part of the assets" of the American, the assets of the Commercial nor to assume in toto its liabilities; that while the American would have no particular objection to assuming the remaining deposits, etc., it would dislike very much to treat as assets all the

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uncollected paper of the Commercial, its bank building and miscellaneous property; that these assets could not be accepted by the American at face value nor at the values placed upon them by the Commercial; that it is doubtful whether the assets are sufficient to pay the amount advanced by the American and the remaining liabilities of the Commercial but that the stockholders of the Commercial would be unwilling to have so low a valuation placed upon the assets, and that the only fair way to adjust the values will be to carry the assets as heretofore as collateral for the obligations of the Commercial paid by the American.

(A copy of the letter is set out herein under (23) in References to Evidence).

(i) In the answer of the Commercial National Bank, its Directors and Stockholders' Committee, to the suit filed by Patterson for the appointment of a receiver for the Commercial's assets, it is stated by the defendants, through A. W. Lane, as attorney, that the said stockholders' committee was appointed "for the purpose of advising with the American National Bank and with the directors of the Commercial National Bank in converting the assets of the said Commercial National Bank into money;" that the assets of the Commercial had been transferred to the American National Bank as liquidating agent; that the American is in possession of the physical assets of the Commercial and should be permitted to collect and apply the proceeds of the same in accordance with the terms and provisions of the contract.

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This suit by Patterson was filed in November, 1914.

(j) In a letter from A. W. Lane to O. A. Park, (Rec. Sec. 6, p. 64), Lane, attorney for the Commercial Na-

tional Bank, encloses to Park, the retained attorney of the American National Bank, a check in favor of the Commercial National Bank, and writes that he has deducted a certain amount from a collection as a fee in full for all services rendered to date "so far as the assets in the hands of the American National Bank at the present time are concerned," but that this would not settle any claim that he may have against the Commercial National Bank "nor is it intended to include the present pending receivership case in the United States Court."

(k) In a letter from L. O. Benton, a member of the stockholders' committee and chairman of the meeting held on the 12th of August, to Dure, another member of the committee, under date October 9, 1914. (Record, Sec. 7, p. 141), Mr. Benton states:

"For two reasons it will be impossible for me to be in Macon on the date named,—second, because I would not care to be a party to a meeting of this kind where it is proposed to turned over to the Central Trust Company any of the assets of the Commercial."

(l) The provision in the contract of August 11th, that shareholders shall not be relieved of their statutory liability for any indebtedness of the Commercial growing out of the transactions based upon the transfer of assets under the resolutions of August 1, 1914.

197 (m) The statement appearing in the minutes of the shareholders held on August 12th, made by Mr. Anderson, as follows:

"The assets over liabilities figured according to my recollection about $443,000.00, and that was the margin on which they (the American National Bank) took

it, backed by the additional liability of the stockholders." (Record, Sec. 1, p. 19).

Mr. Anderson testified that Mr. Taylor had not told him that so far as the American was concerned, the venture was backed by the additional liability of stockholders. The statement should be considered only in the light of an opinion on the part of Mr. Anderson as to the considerations moving the American to take over the bank.

(n) The letter of J. F. Lewis, a member of the stockholders' committee, to his nephew E. N. Lewis, cashier of the Commercial, under date August 18th, 1914, requesting that certain stock standing in his name be transferred to E. N. Lewis, as the true owner, and in which J. F. Lewis states: "Kindly attend to this promptly and oblige, because there may be an assessment of the stockholders of the Commercial National Bank." (Record, Sec. 6, p. 21).

(o) Letter of E. N. Lewis to J. F. Lewis, under date April 9, 1915, in which he writes:

"The news which your letter brings, to the effect that the opinion prevails that the stockholders of the Commercial will be assessed is a great disappointment to me. I certainly hope that this will not be done.

The inquiries which you make are, I suppose, questions of law rather than fact, and I suppose further, will be the subject of considerable litigation
198 if the stockholders are held for an assessment.
You are entirely mistaken in the idea that I am familiar with the present status of the bank's af-

fairs. The committee have never cared to have any of my assistance and I have not as you know been at all in touch with it. The American have at all times called on me for information with reference to certain particular matters, such as to what my testimony would be concerning notes that were in suit.—I am too poor a stenographer and you have not the time to read what I think about every loan in the bank, but I am sure that there are not enough losses to necessitate an assessment." (Rec. Sec. 6, p 26).

(p) Request of L. O. Benton, on November 27th, 1914, that Commercial National Bank transfer Certificate of stock No. 413 for 70 shares to Mrs. L. O. Benton, and Certificate No. 306 for 28 shares of stock to L. O. Benton, Jr.

(See copy letter of Vice-President of Commercial National Bank in reply. Rec. Sec. 7, p. 74).

(q) Suit of Birdsey, a stockholder, filed in Bibb Superior Court, praying the appointment of a receiver to administer the assets of the Commercial, the object of such administration being to avoid assessment of stockholders.

(See Suit. Also Birdsey vs. Com. Nat. B., 143 Ga., page 627).

199 (r) Statement of E. N. Lewis, Cashier of Commercial, in letter to Comptroller, August 3rd, 1914, (herein p. 23), as follows:

"The Directors felt justified in contemplation of action to this end (consolidating with American by liquidation and transfer of assets) to perfect arrangements today, by which the assets of this Bank have been actually transferred to the American National

Bank, and that Bank has assumed the liabilities of this Bank."

(s) Statement of Scott, cashier American National Bank in letter, dated August 1, 1914, (herein p. 24) as follows:

"With resources now increased to nearly five million Dollars, etc."
Resources of the American at close of business July 31, 1914, were $3,792,488.79. (See p. 60 herein).

(t) Statement of R. J. Taylor, president American, in letter to Comptroller, of August 5, 1914, that he will explain as far as possible "the details of the absorption of the Commercial National Bank by this Association."

(u) Statement in letter of Taylor, president, to Comptroller, dated August 8, 1914, "the taking over of the assets of the Commercial National Bank and the assumption and payment of its liabilities has proceeded quite satisfactorily."

(v) Statement of Cashier of American in letter to Comptroller, dated August 13, 1914, stating American has assumed circulation of Commercial, that a copy of resolution of American agreeing to act as liquidating agent and of the contract between the banks is enclosed; that the American has taken over the Government deposits, and that the American will be pleased to have a National Bank Examiner examine the affairs of the Commercial National Bank "in our hands as liquidating agent."

(w) In a resolution of the Board of Directors of the American, under date August 13, 1914, it is stated that the Commercial "is winding up its business for the purpose of consolidating with this association." (Rec. Sec. 1, p. 49).

(x) In a resolution of the Directors of the American National Bank dated August 7th, authorizing the president to appoint an advisory committee to assist him in looking after the affairs of the Commercial, said bank is referred to as having been "absorbed" by the American. (Rec. Sec. 1, p. 49).

(y) Following statement in minutes of joint committee under date August 26, 1914:

"Mr. R. J. Taylor stated that he had requested Mr. Hillyer to take particular charge of the Commercial National's affairs and the collection of outstanding notes held by them." (Rec. Sec. 1, p. 64).

(z) Statement of Cashier of American in letter of August 1st, (herein p. 24) that he takes pleasure in announcing that the American has "absorbed" the Commercial.

(aa) Statement of C. M. Adams at a directors' meeting of the Commercial National Bank held September 29, 1914, "that in his opinion the stockholders should do what they started out to do, and ratify the action of the directors in merging the bank with the American. (Rec. Sec. 1, p. 27).

201 Relative to Clause Referring to Statutory Liability of Shareholders. Contract of August 11, 1914.

(A). In Negotiations Between Mallary and Taylor Nothing said about Shareholders' Liability.

In the conversations and negotiations between E. Y. Mallary, president of the Commercial, and R. J. Taylor, president of the American, including the conference held by officials of two banks on night of July 31st, 1914, nothing was said by either party about any possible liability of stockholders growing out of the proposed transaction. Reference is made to the following testimony:

E. Y. Mallary, testified, (Sec. 4, pp 27-8):

"Q. And you do not mean to say, either, that Mr. Taylor made any agreement with you that he would not undertake, if it became necessary, to collect from the stockholders, the stockholders' liability?

A. Mr. Park, there was not a word said about that in all this deal—that there would be any liability from the stockholders.

Q. And there was no promise or agreement on the part of Mr. Taylor, or anybody else representing the bank, that they would not resort to it if it was necessary?

A. No, sir.

Q. As a matter of fact instead of any liability on the part of stockholders, you expected the stockholders to get par for their stock or very nearly?

A. I certainly did, yes, sir.

Q. To ask the American National Bank to make an agreement to release them never entered your mind?

A. Mr. Park, in all my talks or trade with Mr. Taylor, it was never contemplated that there would
202 be any loss to the stockholders, and therefore we never asked them to make such agreement.

Q. And he never made any statement at any time to indicate that he might not do it if it became necessary?

A. No, sir, we never thought it would be necessary.

R. J. Taylor testified that he did not recall that the question of loss to the stockholders was ever discussed by Mr. Mallary and himself, and does not remember having any conversation on that subject with Mr. Dure, McMcKay, Mr. Anderson "or any of them." (Taylor, Sec. 8, pp. 32, 34).

Mr. Taylor was asked about statements alleged to have been made by him to Mr. Cobb, vice-president of the Commercial that shareholders should receive dollar for dollar on their stock, and to other people and stock holders that they should receive other amounts. He replied that, in answer to questions about how the stockholders would likely come out, if the assets were as good as the officers of the American said they were, the stockholders should receive the amount stated to the inquirers; that it was not the intention of the American's officers just at that time to make any statements that would be injurious to the American or any other bank or cause trouble, that in such answers he was careful not to give his own opinion, that he did not want to create the impression that the American had taken over a bank "in a very critical condition" and were trying to keep down a run. He says "That would do no good, it would not help the cause," and

as to his opinion of the assets, says: "I don't say it boastingly, but I didn't miss the value of the assets, leaving out the Jelks' matter, no great amount." (Sec. 8, pp. 29, 30, 54, 55).

203 (b) Statement at Stockholders' Meeting.

At the stockholders' meeting held on August 12th, 1914, the contract was read in full. Some objection was made to that clause of the 6th paragraph providing that stockholders should not be relieved from their statutory liability. The matter was discussed.

Mr. Lane, attorney for the Commercial, explained that if the shareholders were liable under the contract and law, they were liable whether the clause was in the contract or not, and that Mr. Taylor, president, and Mr. Park, attorney for the American, insisted that the clause go in the contract.

The contract was then ratified. (Record, Sec. 4, p. 19, 44, 76, 47).

(25) Death of Certain Officers of Commercial.

J. J. Cobb, active vice-president, E. N. Lewis, cashier, and A. W. Lane, attorney, all of the Commercial National Bank were dead at the time the taking of testimony in this case was begun.

American in Liquidation.

(26) The American National Bank is now in liquidation, Joel Hurt, being Liquidating Agent.

(27) Notice of Dissolution.

The following notice under the head of legal advertisements was inserted in all issues of the Macon Tele-

graph beginning August 12th, 1914, and was re-inserted and advertised after the meeting of September 30th:

204 "The Commercial National Bank of Macon, Georgia, located in the State of Georgia, is closing its affairs. All note-holders and other creditors of the association are therefore hereby notified to present the notes and other claims for payment. E. N. Lewis, Cashier, Dated Macon, Ga., August 12, 1914.

(28) Liquidation Practically Completed.

Pursuant to the agreement made by the directors of the Commercial National Bank and the American National Bank, and their officers, plaintiff took charge of all the assets of the Commercial National Bank, so transferred to it as security, on the 3d day of August 14, 1914, and from and after that date it pay in due course and as called upon all of the depositors of said Commercial National Bank, its bills payable and other liabilities.

Thereafter pursuant to the Articles of Agreement entered into between the Commercial National Bank and the American National Bank, dated August 11, 1914, plaintiff took charge of the assets of said Commercial National Bank and proceeded to reduce the same to cash and apply the amounts received to reimburse itself for the amount which it had advanced in the payment of the liabilities of the said Commercial National Bank assumed and paid by it in pursuance of said articles of agreement.

All of the assets have been reduced to cash, except assets not exceeding $21,842.84 in value.

All of the liabilities of the Commercial National Bank have been paid, except the amount due the American

National Bank for advances made by it under the above agreement and contract, to-wit, $349,047.54.

205 FINDINGS OF FACT.

OTHER ISSUES.

206 ISSUE NO. 2.

If the indebtedness claimed by the Plaintiff is a debt or engagement for which the shareholders of the Commercial National Bank are liable what is the amount of such indebtedness?

I find from the evidence that the amount of the indebtedness of the Commercial National Bank to the American National Bank, including interest at 7% on average daily balances, is the sum of Three Hundred and Forty Nine Thousand and Forty-seven Dollars and fifty-four cents ($349,047.54).

In support of the above conclusion, I refer to the following evidence, ledgers of the Commercial National Bank and American National Bank, statement book of Commercial National Bank, cancelled drafts drawn by Commercial National Bank on American National Bank and paid by the latter bank, statements furnished by American National Bank to Commercial National Bank showing indebtedness, the audits made by Alonzo Richardson & Company, public accountants, testimony of E. C. Scott, cashier American National Bank, detail statement of account from December 7, 1916 to March 1, 1919, showing indebtedness on last mentioned date, as $302,666.96, filed with record.

The indebtedness on April 20, 1920, was $300,488.40. This included interest up to March 31, 1917, of $77,-

424.85. Interest is calculated on average daily balances. This method seems to have been contemplated by the parties and is the only practicable way of determining the amount of interest. The defendants cannot complain, because the interest is less in amount than if calculated on the partial payment plan or as if notes had been given by the Commercial, in either of which cases interest would be compounded. If either of those methods had been adopted in August 1914,
207 when large advances were being made by the American and the daily balances showing great change, the balance at the end of each day would have been treated as a new principal and interest calculated on it accordingly.

The indebtedness on April 1, 1917, was $317,221.77, and on April 1, 1920, was $300,488.40. The average balances were $304,528.12. The balance from April 1, 1920 to April 20, 1920, was that stated above as the balance due on April 1, 1920.

Prior to April 1, 1917, the sum of $77,424.85 was charged in the account as interest on daily balances. The effect of continuing to calculate interest on the average daily balances after April 1, 1917, would result in calculating interest on said sum of $77,424.85, that being a constant amount entering into the daily balances, or charging interest on interest. I have therefore calculated the interest on said sum and deducted it from the indebtedness, as will appear from the following recapitulation.

| | |
|---|---|
| Amount of indebtedness, April 20, 1920, | 300,488.40 |
| Interest at 7% on average daily balances from April 1, 1917, to April 20, 1920, | 65.119.45 |
| Total | $365,607.85 |

| | |
|---|---|
| From which should be deducted interest, previously charged in, on $77,424.85, or interest on interest, | 16,560.31 |
| Indebtedness now due | $349,047.54 |

208 ISSUE NO. 3.

What other liabilities of the Commercial National Bank in addition to the indebtedness claimed by the American National Bank outstanding and unsatisfied, and the amounts thereof respectively?

I find from the evidence that there are no liabilities of the Commercial National Bank in addition to that in favor of the American National Bank, herein referred to.

On August 12, 1914, the Commercial National Bank, through its cashier, caused to be published in the Macon Telegraph under the head of legal notices, a notice to the public that the Commercial National Bank was closing its business and calling on noteholders and creditors to file their claims with the Cashier. This notice was published for four weeks beginning on August 12th, and a similar notice was thereafter published for four weeks beginning September 30th, 1914. According to the books of the Commercial National Bank its last liability, except that to the American National Bank, was paid on December 17th, 1914. The various audits, and records in the case disclose no other liability.

209 ISSUE No. 4.

What assets, if any, of the Commercial National Bank remain uncollected or not reduced to cash, and what is the value thereof?

I find from the evidence that the face value of the uncollected loans and discounts of the Commercial National Bank is several hundred thousand dollars, but that the only loans and discounts of any considerable value are sixteen in number, described by E. C. Scott, cashier, on pages 24-30 of Sec. 2 of the Record. On March 31, 1919, at the time he testified, these aggregated $20,671.40. Since that time $2178.56 has been realized from those loans and discounts. These loans and discounts referred to as being of the face value of $20,671.40 are all classified as "doubtful" by Mr. Scott, and from the evidence it is hardly probable that more than 33 1-3% of that amount can be realized from them. The other assets consist of certain shares of stock of the Georgia Kaolin Company and the Pynetree Paper Company, and a full estimate of their value is $3350.00. Taking the loans and discounts referred to at their face value and the stock at the valuation named, the assets on March 31, 1919, amount in value to $24,021.40. From this should be deducted the amount realized from assets since March 31, 1919, to-wit, the sum of $2178.56, and the assets remaining at the present time are of the value of Twenty-one Thousand Eight Hundred and Forty-two Dollars and eighty-four cents, ($21,842.84).

210 ISSUE NO. 5.

After applying to the indebtedness of the Commercial National Bank the assets of said Bank remaining on hand, what amount will be due for which the shareholders of the Commercial National Bank will be liable?

I find that after applying to the indebtedness of the Commercial National Bank, to-wit $349,047.54, the value of the assets remaining on hand, to-wit, $21,842.84, the amount for which the shareholders of the Commercial National Bank will be liable, is the sum of Three Hundred and Twenty-seven Thousand, Two Hundred and Four Dollars, and seventy cents, ($327,204.70).

211 ISSUE NO. 6.

Who are the shareholders of said Commercial National Bank? What number of shares is owned by each respectively; and what amount must be assessed against each shareholder in order to pay off and satisfy the indebtedness of said bank?

I find that the Shareholders of the Commercial National Bank now, and on August 1, 1914, are the following:

| Name. | Shares |
|---|---|
| Adams, C. M. | 10 |
| Anderson, N. Z. | 40 |
| Anderson, W. T. | 70 |
| Andrew, C. H. | 8 |
| Andrew, C. H. Trustee, | 1 |
| Armstrong, Guy | 20 |
| Atlantic National Fire Ins. Co | 108 |
| Bairman, Miss Mary | 1 |
| Bairman, W. M. | 15 |
| Bairman, Mrs. W. M. | 1 |
| Beeland, W. J. | 3 |
| Bene, C. J. F. | 35 |
| Bennor, Mrs. Jennie | 5 |
| Benton, L. O. | 10 |

| | | |
|---|---|---|
| Benton & Bro, L. O. | 45 | |
| Birdsey, A. H. | 23 | |
| Blount, Roy | 10 | |
| Bradley, Oscar | 25 | |
| Brandon, C. H. | 50 | |
| Briggs, Jno. E. | 5 | |
| Burghard, L. H. | 10 | |
| Central Trust Co. | 10 | |
| Cheatham, L. B. | 2 | |
| Christian, R. P. | 10 | |
| Cobb, J. J. | 35 | |
| Cobb, J. J., Agt. | 1 | |
| Commercial & Savings Bank | 631 | |
| Conn, Mrs. C. G. | 2 | |
| Coon, J. S. | 15 | |
| Cone, Jno. E. | 30 | |
| Daniel, Miss Mary Virginia | 2 | |
| Daniel, W. A. | 28 | |
| Dasher, Arthur L. | 5 | |
| Davis, R. L. | 5 | |
| Carried forward | | 1271 |
| Dent, J. Tom | 2 | |
| Dickerson, R. W. | 15 | |
| Draper, Wallace | 1 | |
| Draper, Jesse | 1 | |
| Draper, Robt. S. | 1 | |
| Draper, Wm. M. | 1 | |
| Dunwody, J. M. | 2 | |
| Dunwody, Kennith W. | 1 | |
| Dunwody, W. Elliott | 1 | |
| Dunwody, W. E. | 8 | |
| Dure, Leon S. | 43 | |
| Estes, Claude | 2 | |

| 212 Name. | Shares. |
|---|---|
| Brought forward | 1271 |
| Foley, Peter C. | 2 |
| Grant, Mrs. Annie Inman | 25 |
| Grant, Jno. W. | 25 |
| Guerry, Homer | 35 |
| Hazedon, Z. Estate of | 7 |
| Haley, Herbert F. | 25 |
| Harlan, R. J. | 1 |
| Hart, J. Freeman | 5 |
| Hertwig, F. H. | 2 |
| Hightower, W. H. | 5 |
| Hightower, R. E. | 30 |
| Hinkle, A. B. | 10 |
| Hinton, J. C. | 10 |
| Howell, Queen V. | 8 |
| Hubbel, Eveline W. | 5 |
| Hubbel, G. W. | 10 |
| Huguenin, E. D. | 10 |
| Irvin, Alexander | 20 |
| Jelks, E. N. | 25 |
| Jelks, T. M. | 25 |
| Jelks, Mrs. T. M. | 2 |
| Jessup, J. L. | 10 |
| Lane, A. W. | 30 |
| Leak, Mrs. H. G. | 1 |
| Lewis, E. N. | 131 |
| Lewis, Jno. F. | 200 |
| Little, W. A. | 15 |
| Macon Cooperage Co. | 1 |
| Mallary, E. Y. | 10 |
| Mallary, F. L. | 10 |
| Manee, Amanda B. | 10 |
| Manee, E. Stewart | 25 |
| Martin, E. L. | 6 |

| | | |
|---|---|---|
| Middlebrooks, E. A. | | 2 |
| Minter, J. W. | | 5 |
| Carried forward | | 2092 |

| 213 Name. | | Shares. |
|---|---|---|
| Brought forward | | 2092 |
| Minton, J. F. | | 5 |
| Morgan, Cecil | | 50 |
| Morgan, Cecil | 50 | 50 |
| Morgan, J. Dudley | | 5 |
| Max Morris Drug Co. | | 2 |
| Myers, W. T. | | 10 |
| McEvoy Book and Stationery Co. | | 2 |
| McKenna, W. A. | | 2 |
| Newstedt, Anna Duhne | | 20 |
| North, Mrs. Mary D. | | 1 |
| Oglesby, Mrs. Lamar Lewis | | 50 |
| Pace, Miss Meta Isabelle | | 5 |
| Palmer, Mrs. Leigh C. | | 1 |
| Parker, T. C. | | 150 |
| Patterson, A. L. | | 50 |
| Patterson, A. L. Pres. | | 67 |
| Payne, J. W. | | 10 |
| Pellew, L. E. | | 1 |
| Proudfit, A. Estate of | | 10 |
| Pullen, P. W. | | 30 |
| Rahn, Mrs. H. G. | | 1 |
| Renfroe, Ellis, Permenter Co. | | 1 |
| Ries, F. C. | | 35 |
| Roush, W. A. | | 10 |
| Roush, W. A., Agt. | | 10 |
| Routzahn, R. G. | | 15 |
| Sams, A. J. | 5 | 5 |
| Sheridan, Ed. A. | | 5 |

| 214 Name. | Shares | |
|---|---|---|
| Wheeler, W. P. | 5 | |
| Shorter, Mrs. Lizzie M. | 1 | |
| Smith, Joel A. | 10 | |
| Smith, Miss Mary Lou | 3 | |
| Smith, R. L. | 35 | |
| Southern Securities & Financing Co. | 103 | |
| Springer, Mrs. J. E. | 10 | |
| Stafford, J. W. | 1 | |
| Stafford, Mrs. Rubie | 10 | |
| Stewart, A. M. | 50 | |
| Streyer, Miss Jessie P. | 27 | |
| Tindall, H. C. | 6 | |
| Tindall, Julia C | | |
| Tindall, Bessie K, Julia C., Gdn. | 1 | |
| Tindall, M. C., Julia C., Gdn. | 1 | |
| Tindall, J. S., Julia C., Gdn. | 2 | |
| Todd, P. D. | 15 | |
| Wells, W. D. | 1 | |
| Carried forward | | 2921 |
| Wilburn, W. E. | 5 | |
| Wilcox, Henry B. | 10 | |
| Wiley, C. M. | 1 | |
| Wilkins, J. J. | 2 | |
| Williams, F. W. | 3 | |
| Williams, P. H. | 3 | |
| Wright, B. A. | 50 | |
| Brought forward | 2921 | |
| Total | 3000 | |
| @ $100.00, | | $300,000. |

I further find that in order to pay off and satisfy the indebtedness of said Commercial National Bank each of its shareholders must be assessed the full amount of his stock at the par value thereof.

215 CONCLUSIONS.

The Law applicable to the case.
Findings of Law.
Conclusion on Issue No. 1.
Conclusions on other Issues.
Conclusions on Special Issues.

216 CONCLUSIONS.

The Law applicable to the Case.

Under the decision of the United States Circuit Court of Appeals in this case (254 Fed. 249) and the decisions of the District Court (246 Fed. 721. and 248 Fed. 187) all questions as to the form of the bill, the relief sought, the compliance of plaintiff with the statutes, and other technical questions are eliminated so far as this reference is concerned. The plaintiff is entitled to recover in this suit if the proof sustains the allegations of the amended bill.

The defendants, the shareholders of the Commercial National Bank, and the Bank itself, in the Circuit Court of Appeals contended, as they now contend, that the transaction between the two banks was a sale of assets by the one to the other or a consolidation of the two, and that the contract entered into and the performance under it did not result in the creation of the relation of creditor and debtor between them.

The question, as stated by Judge Walker speaking for Circuit Court of Appeals, was whether the dismissal of the amended bill could be sustained on the ground that its averments did not show that the plaintiff had a claim against the Commercial for which the statute made the Commercial's shareholders individually responsible.

This decision of the Circuit Court of Appeals
217 construing the contract between the parties in the light of the averments of the amended bill, assuming them to be true, is the law of this case.

The question for determination now is whether under the contract as construed by the Court, but in the light of the facts developed by the evidence, the averments of the amended bill have been sustained and the plaintiff has a claim against the Commercial National Bank for which the statute makes its shareholders individually responsible.

This will involve a consideration of the "exigency of the situation" existing on August 1, 1914, which the agreement entered into on that day was designed to meet, and the construction of that agreement, evidenced by the resolutions of the Boards of Directors of the two banks, respectively, in the light of that situation.

The "situation" is viewed from two standpoints. From that of the defendants, the Commercial Bank is a solvent, prosperous institution, with large deposits and a valuable patronage, but with assets not readily convertible into cash, and therefore temporarily embarrassed for want of available money to enable it to properly conduct its business, and particularly to meet anticipated heavy, and therefore unexpected demands on the part of its creditors, and is offering to consolidate with the American National Bank by a transfer of its business to that bank, including a sale of its assets, upon condition that

the American Bank will assume its liabilities, and after paying them, account to the shareholders for the overplus remaining after its assets had been realized upon, the advancements necessary for the American Bank to make in advance of realizing upon such assets being only an incident to the contemplated liquida-
218 tion and consolidation. From the standpoint of the plaintiff, the "exigency" of the Commercial's situation was such, that in view of contempated voluntary liquidation and consolidation with the American by sale of assets, to be effected in the future, if determined upon by the shareholders of the Commercial, it was necessary for the Commercial to make some immediate arrangement to procure money sufficient to enable it to continue in business and pay its liabilities on demand, and particularly to meet anticipated heavy withdrawals by its depositors, otherwise the Commercial would be compelled to close the doors of its banking house. It is contended by plaintiff that to meet this exigency, the Commercial Bank applied to it for a loan of money, or for advances to enable it to meet its obligations, and further that the American Bank offered, through the resolution of its board of directors, to assume the liabilities of the Commercial and make the advances of money necessary to pay its depositors and other creditors on demand, upon proper security for such advances being given by the Commercial Bank, thus giving the Commercial Bank an opportunity to realize upon its assets to best advantage for the benefit of all concerned, the method in contemplation by the Commercial being that of liquidation and sale of assets. Under this view, the method of liquidation was only incidental to the main object of the parties, which was as stated the procurement of money necessary

to meet its obligations as and when they were presetned for payment.

Adverting to the opinion of the Circuit Court of Appeals, it will be seen that Judge Walker, says that certain of the provisions of the contract of August 11, 1914, "give some color" to the contention of the defendants. These provisions are said to be,—"the one as to the transfer of the assets." (paragraph 1),—
219 "the one in regard to liquidating the Commercial Bank and consolidating it with the American Bank by the purchase by the latter of the assets of the former," (paragraph II.),—and the one in regard to making one of the banks liquidating agent for the other," (paragraph III.) To these should be added the one as to the assumption by the American Bank of the circulating notes of the Commercial Bank, authority for which is found in Sec. 5223 R. S., (last clause of paragraph V. of the contract). Under the resolution of the American of August 1, 1914, that Bank in offering to assume the liabilities of the Commercial described in a certain list furnished by the Commercial, excepted its circulating notes, but some time prior to the execution of the contract of August 11th had agreed to assume these notes, and their assumption by the American was duly authorized at a later meeting of its directors.

The Circuit Court of Appeals, speaking through Judge Walker, continues: "The provisions referred to..... lose the significance sought to be attributed to them when they are considered in connection with the other provisions contained in the contract, in the light of the situation existing when the contract was made and for some time afterwards, and of the construction of the contract by both parties to it as disclosed by what was done under it."

The "other provisions" of the contract are,—the one as to the assumption by the American of the liabilities of the Commercial and its promise to pay the same when and as presented for payment, (paragraph V.),—the one as to the American holding all the assets of the
220 Commercial Bank as security for advances,—the one requiring the liquidating agent to reimburse the American for moneys advanced with interest thereon,—the one as to the ratifying by the stockholders of the Commercial Bank of the action taken by its directors on August 1, 1914, transferring and assigning all of its assets to the American Bank, in order to fully protect and secure said Bank for all moneys advanced or to be advanced by said Bank, such action being recited in the preamble of the contract,—the one as to the holding by the American Bank of all the assets of the Commercial Bank as security for the advances made up to the time of interruption or discontinuance of liquidation, in case of such interruption or discontinuance,—and the one as to the liability of the shareholders to respond, for any deficit which may remain after exhausting the other assets in payment of the Commercial Bank's liabilities.

The Court does not hold that the provisions of the contract referred to as "giving some color" to the defendants' contention, considered in connection with the "other provisions" just recited, did not have the effect of making the American a creditor of the Commercial. Nor does the Court, as I read the opinion, in terms hold that the language of the contract is ambiguous. The Court does near the conclusion of the opinion use this language:

"But it may be assumed or conceded that the language of the contract fails to show unambiguously that perform-

ance by the American Bank of the obligations it incurred was to have the effect of making it a creditor of the Commercial Bank."

That is to say, that it may be assumed or conceded for the sake of the discussion, the contract is ambiguous.

Even conceding, for the sake of the argument,
221 that the language of the contract is ambiguous, the Court holds:

"The averments of the bill show that both parties to the contract from the commencement of performance under it, treated the payments made by the American Bank as having the effect of making it a creditor of the Commercial Bank."

If the Court had distinctly held that the contract was unambiguous, it would be unnecessary to consider the evidence submitted in support of the allegations of the amendment to plaintiff's bill. The Court having before it the contract and as well the averments as to the situation existing at the time it made and as to what was done by the parties under it, placed its decision upon both. Therefore, under the assumption that the contract is ambiguous, the facts as established by the evidence, must be considered in the light of the principles of law laid down by the Court as applicable to this case.

It will be at once observed that the provisions of the contract giving "some color" to the defendants' contention,—except the first as to the transfer of assets, which is common to the contentions of both parties—relate to matters to be submitted to the shareholders on August 12th. The contract was executed by the two banks on August 11th and therefore, had primarily in view the action to be taken by the shareholders on

the following day. The contract is entitled as being an agreement "for the liquidation of the Commercial National Bank." It provided for a plan of liquidation to be carried out by a liquidating agent. In it the Commercial Bank agreed that it would on August 12th procure a resolution of its shareholders consolidating that Bank with the American by sale of its assets to the American. Inasmuch as the resolution of the
222 American, which was adopted in the morning of August 1, 1914, and contained the offer of that Bank to assume the liabilities of the Commercial and pay its depositors and other creditors on demand upon being protected and secured by the Commercial Bank, did not refer to liquidation or consolidation contemplated by the Commercial, the resolution of the Commercial Bank, which was not adopted until Saturday afternoon, August 1, 1914, and so far as it relates to the transfer of assets to the American and the assumption of its liabilities by the American was an acceptance of the American's offer, was first recited in the preamble to the contract. This fact and the further fact that in the amendment to plaintiff's bill, the resolution of the Commercial Bank precedes that of the American Bank, has occasioned some confusion, and on the face of the contract would make it appear that the resolution of the Commercial contained the proposal and that of the American the acceptance. Construed as a proposal, it may be argued that the prime object of the Commercial was a consolidation with the American, and that its offer was to transfer all its assets to the American, either as security or as cash, in consideration of an agreement on the part of the American to assume its liabilities. Under that view, it is contended that the resolution of the American was an acceptance, and that in the opinion of its officers all the assets of the Commer-

cial were sufficient to fully protect and secure the American for all amounts assumed by it, and that in carrying out the "general purpose" of the parties,—the officers of the Commercial having authority under the resolution of the Commercial to transfer its assets as cash—all the assets of the Commercial were accepted by the American as cash, and it thereafter held them as purchaser.

223 In view of the fact that the resolution of the Commercial precedes that of the American in the contract, it is not surprising that one of the learned counsel for the defendants in his brief before the Circuit Court of Appeals, which was submitted to me on the argument, at the outset of his analysis of the resolutions, makes this statement:

"It is evident that the Resolutions of the Commercial precedes those of the American and the latter are the complement of the other. The former was a proposition; the latter, an acceptance."

In our consideration of the contract up to this point, no provision has been inserted as a memorial of the action taken by the directors on August 1st in transferring the assets to the American, showing whether they were transferred as security for advances or as cash, and no provision has been made to preserve the rights of the parties growing out of the directors' agreement, after the assets have been turned over to the liquidating agent for realization and administration. The shareholders at their meeting on the 12th of August took no action on the question of consolidation, unless they did so in ratifying the contract. They did appoint a liquidating agent and directed it to reduce the Commercial's assets to cash, and make a distribution.

The American was holding the assets as pledgee or as purchaser, and had been holding them as one or the other since the directors agreement of August 1st.

224 The contract of August 11th, 1914, undertakes to recite the action taken by the directors on August 1st. In paragraph II of the contract, the Commercial agrees to procure a resolution of its shareholders "ratifying and confirming the action of the Board of Directors of said Commercial National Bank as herein recited." The action, as recited in the preamble, is that on August 1, 1914, the bank transferred and assigned all of its assets to the American Bank in order to fully protect and secure said bank for all moneys advanced or to be advanced by said bank, etc."

The contract undertakes to protect the rights of the American as pledgee, after the assets shall have been taken over by the liquidating agent for the purpose of reducing them to cash, by the clause in the VI by providing that notwithstanding the appointment of a liquidating agent, all of the assets of the Commercial are "to be held as security by said American National Bank for all advances made by it in paying depositors, etc."

This leads to a consideration of the directors agreement evidenced by the resolutions of the banks, in the light of the situation at that time, for the purpose of determining whether the assets were in fact transferred to the American as security. What was the situation of the bank?

The Commercial National Bank, while supposedly solvent, as early as the first part of June 1914 was in a precarious condition. A National Bank Examiner about that time made a searching examination of its affairs. It had extended large and excessive lines of credit to certain customers. Loans to three of these exceeded in amount the entire capital and surplus of the institution.

It had borrowed money greatly in excess of the amount permitted by law. Its current receipts were in-
225 sufficient to enable it to properly carry on its business, and its officers were resorting to practices termed by the Comptroller of the Currency "particularly reprehensible", as "reflecting severely upon the management" and the making of its last condition report was declared by the Comptroller to closely border upon a violation of the criminal statutes. The bank was in effect put upon probation by the Comptroller its management to a large extent taken from its officers and entrusted to W. T. Anderson and Leon S. Dure, two members of the finance committee, who by the action of the directors were given "general supervision" of its affairs. Under the direction of these gentlemen the bank encouraged deposits but made few loans and in small amounts, and vigorously pressed collections. Little progress was made by them in reducing the extended condition of the bank. "Bad matters got worse." Withdrawals of deposits by banks began, the "drain" became stronger than the bank could take care of, and Anderson and Dure were "unable to get in enough money on loans to carry on business."

During this period Lewis, cashier, obtained a loan from the American. Its president and vice president, E. Y. Mallary and J. J. Cobb, visited R. J. Taylor at his home and procured for Jelks, a director and large debtor, loans of $42,000.00, one through the American and the other through the Continental Trust Company, of which Mr. Taylor was also president. Late in July, the Commercial had borrowed $50,000.00 from the American, giving two demand notes, secured by customers paper.

On Thursday night, July 30th, rumors affecting the Bank were becoming current. Anderson and Dure were so disturbed by the fear of a run on the bank, they

remained all night in conference. The World
226 War was imminent, the financial outlook "very bad." Rumors and war "brought matters to a quick head."

Moved by the rumors, and recalling a conversation had with R. J. Taylor on the occasion of the visit to him when the application was made for the Jelks loan, in which Taylor stated that he would take up the matter of a consolidation of the Commercial with the American in the Fall, E. Y. Mallary again called upon R. J. Taylor on the evening of July 30th. Mallary referred to the rumors affecting the Commercial, and "stated the case to him". The evidence is conflicting as to what occurred at this interview. Taylor is positive that Mallary sought a loan of $50,000.00 or $100,000.00 and that he refused to make it. He states that he suggested to Mallary that the condition of the bank be placed before the other banks of Macon at a special meeting of the Clearing House Association on the following morning; that Mallary was unwilling to do this, stating that the American had always been friendly to the Commercial and he wanted the American "to handle it, if it had to be done". Mallary is equally positive that Taylor suggested an immediate consummation of the "deal" they had "in mind", refering to a consolidation. Taylor agreed to appoint a committee from the officers and directors of the American to investigate the assets of the Commercial on the following night, July 31st. Taylor says this was done for the purpose of determining what, if any, further assistance the American could render to the Commercial, while Mallary states that it was done with a view to a consolidation of the two banks.

On the night of July 31st, committees from both banks met at the Commercial's banking house. The attorneys of both banks were present. The assets of the

Commercial were examined and appraised by the American's officers.

227 At the end of the conference of bank officials, the American made another definite loan to the Commercial secured by definite security. This loan was for $25,000.00, made to enable the Commercial to keep its doors open during the day—the loan being made about daylight—August 1st, and it was secured by the conveyance to the American of the banking house of the Commercial. Taylor was to take up the matter with the board of directors of the American. The matter he was to take up, was upon what terms the American would advance or lend to the Commercial sufficient moneys to enable it to pay its liabilities, in advance of realizing upon its own assets, the amount of the loan at any given time being equivalent to the amount paid out by the Commercial on its liabilities, less the amounts realized by it from its assets and paid on liabilities.

The situation is, however, complicated by several considerations. Voluntary liquidation was considered absolutely necessary. Liquidation de jure could not begin until determined upon by the formal action of stockholders. In the meantime the bank would be in a de facto state of liquidation. The notice to stockholders of a meeting to consider liquidation would have that effect. The bank was believed to be solvent, and there was no intention to let the assets of the bank get beyond the control of the stockholders who were so vitally interested in their proper administration. Taylor was himself the president of two banks. The failure of the Commercial National Bank meant the almost inevitable failure of its two allied institutions, the Commercial & Savings Bank and the Central Trust Company. He

was interested in preventing such failures, with the attendant disastrous consequences, particularly at that time when buiness conditions were "very bad." While this was true, Taylor was in a position to dictate the terms upon which he would lend the Commercial the money necessary to meet its liabilities in ad-
228 vance of realizing upon its assets. Since the liquidation of the Commercial was necessary, Mr. Taylor saw an opportunity to further enhance the "pre-eminence" of the American Bank by having it in some way absorb as far as possible the deposits and patronage of the Commercial. It is also true that if he made large advances to the Commercial, he would expect to have some control over the liquidation of its assets.

The answer of the American to the request of the Commercial for a loan of money for the purposes stated, is contained in the resolutions of its Board of Directors of August 1st, adopted about ten o'clock in the morning. The American proposes to make the loan or advances upon certain conditions, including the "taking over" of the business of the Commercial by the American.

The American offers, first, to assume the payment of all the liabilities of the Commercial shown by a list furnished to it by the Commercial. This list is attached to the contract as Exhibit A, and appears from the evidence to contain all the liabilities of the Commercial shown by its books, except its circulating notes.

The first condition upon which it is willing to assume the liabilities and pay them as presented for payment is that the Commercial agree to transfer to it as cash,—cash, cash items, bills receivable, etc. "sufficient in

amount and in value in the estimation of the
229 officers of this association (the American) to fully protect and secure this association for any and all amounts as assumed."

It will be at once noted that the American does not offer to accept all the assets, that is, as an entirety, as cash. It expressly limits the amount it will accept to an amount which in the estimation of its officers will be sufficient to protect and secure it for all amounts so assumed.

It was intended that the assets of the Commercial should be reduced to cash as rapidly as possible and applied on the liabilities of the Commercial as far as possible. The American was to advance the deficit, that is the amount in addition to the amount realized from assets, which it was necessary to pay out on liabilities when and as they were represented for payment. This deficit, representing the amounts of money advanced to the Commercial, is the loan which the American insists on being paid or secured. Such an advance of money, under the method of accounting used by the two banks after August 1st, would appear on the ledger of the Commercial as a debt due the American, and on the ledger of the American as an overdraft against the Commercial. The American was willing to have this overdraft paid by a transfer of a sufficient amount of assets as cash, that is, as money, or as referred to in the next condition, have it evidenced by a note of the Commercial secured by the transfer of sufficient assets. Without discussing the significance of the method of accounting employed, it may be remarked at this time that if all the assets had been taken over as cash by the American, under that method of book keeping, the initial entry on the American's account in the Commercial's ledger would have been an overdraft of $1,000,000. against the Ameri-

can, and the overdraft would have continued on the Commercial's books instead of on the American's.
230 The fact that the overdraft was carried by one bank rather than the other is a circumstance which will be considered later.

The second condition upon which the American is willing to assume the liabilities, is that the Commercial transfer to it as collateral for its notes,—cash, cash items, etc., sufficient in amount and value as aforesaid to secure the American for any and all amounts so assumed.

It will be noted in this instance that the American is not asking that the notes of the Commercial be secured by a transfer of all its assets as collateral. If however the American was willing, as seems to be contended by the defendants, that the Commercial transfer to it as cash all of the Commercial's assets to fully protect and secure it for any and all amounts assumed, surely the American would be willing that the Commercial transfer to it as collateral for the Commercial's notes all of the Commercial's assets to fully protect and secure it for any and all amounts so assumed. In the latter case, on August 3rd, the Commercial should have given the American a note for $1,100,000.00, secured by a transfer of all its assets. The assets pledged would have been reduced to cash and applied on its note. The balance due on the note would now be about $320,000.00. In that event, would that be a debt of the Commercial? Certainly. I think the conclusion follows that the American did not offer to accept all the assets, as an entirety, and at the time of the transfer, as cash. Nor did it exact that the Commercial transfer to it as collateral all its assets.

If neither of the foregoing conditions are acceptable to the Commercial, a third is proposed. The American

is willing that the Commercial shall otherwise satisfactorily secure it for any and all amounts so assumed.

231 An example of such security being given is found in the record in this case. On the day the assets of the Commercial National Bank were taken over by the American National Bank, the assets of the Commercial & Savings Bank was being taken over by the Continental Trust Company. It appears from the evidence that the security furnished by the Commercial & Savings was a guarantee made by certain of its stockholders and by the other banks in Macon. The terms of the agreement in that case are not before the Court, and the fact is referred to as affording an illustration of one kind of security some time given in "taking over" banks. If such security had been given by the Commercial to the American in this instance, it would appear that under the resolution of the American, it would have taken over the business of the Commercial, realized on its assets, paid its liabilities, etc., advanced the money necessary to pay them as and when presented for payment, and at the end of liquidation called upon the guarantors to make good the deficit, which the Commercial, although liable, was unable to pay because its assets had been exhausted.

It was immaterial to the American which condition was accepted, and the result would have been the same. Under the first two conditions, the assets of the Commercial would from time to time have been transferred by it as cash or as security, under the third the assets would have been reduced to cash and applied in reduction of the Commercial's liabilities. In the liquidation of the bank a time would have come when all its assets were exhausted. If they had been insufficient to pay all its liabilities, the deficit, representing the net amount advanced by the Amercan throughout the liquidation, would

seem to be a debt due by the Commercial. In case a guarantee had been offered under the third condition above stated, the American could have called upon the grantors to make good the deficit.

232 I fail to find in the resolution of the American any offer to take over as cash or as security all of the assets of the Commercial at a valuation at least the equivalent of the amount of the liabilities of the Commercial. This does not seem to have been the understanding of the Commercial.

Having named the conditions upon which it will assume the payment of the Commercial's liabilities as aforesaid, the American through said resolution makes such assumption conditional upon the American being allowed to "take over" the business of the Commercial,—its liabilities being assumed and advances being secured by transfer of assets—"in the manner aforesaid," and account to the stockholders of the Commercial for any overplus which may remain after paying the indebtedness of that bank in full, and the expenses of realizing on the assets transferred to the American.

Another provision of the resolution is that it shall not became effective until the other banks of Macon Clearing House Association shall agree to supply cash and exchange that may be necessary to meet withdrawals by depositors not immediately re-deposited in the American. This is significant as showing that it was not intended that the deposits of the Commercial should be consolidated with those of the American, and that withdrawals of deposits by the Commercial's customers were to be made from the Commercial and not from the American.

233 By the resolutions of the American, its officers are given full power and authority to carry out the "general purpose" of the resolu-

tion, the details being left to the discretion of said officers, and they are further authorized to make such contract with the Commercial National Bank or with such liquidating agent as may be appointed for that association. Among the contracts which may be entered into with a liquidating agent, the following is given as one by Mr. Pratt, under the title "Purchasing Assets of Liquidating Banks," (Pratt's Digest, (1917) p. 523, Sec. 488.

"Where consolidation is effected without making provision for shareholders of the liquidating bank by increasing the capital of the continuing association, the consolidation resolves itself into a mere purchase of the business of the closed bank, which may carry with it an assumption of liabilities to depositors and other creditors, offsetting an equivalent amount of assets transferred, and the payment in cash of the liquidating value of assets representing shareholders' interests. A contract of that character may be entered into between the absorbing bank and the directors of liquidating agent of the closed association."

This would indicate, in my opinion, that the American understood that the contract contemplated was one that could be entered into between American and the liquidating agent of the Commercial. Save this indirect reference to consolidation, if such it be, there is no reference to consolidation of the Commercial with the American, contained in the American's resolution.

The Directors of the Commercial National Bank, by resolution adopted on the afternoon of August 1st, directed their officers to call a meeting of shareholders to consider the question of the voluntary liquidation of the

Commercial and the consolidation of that bank
234 with the American National Bank "by the sale of its assets to the said Bank."

The notice to shareholders calling a meeting, states the object of the meeting or the business to be transacted to be "the consolidation of this bank with the American National Bank of Macon, Georgia, by the sale of its assets to said American National Bank and the assumption of its liabilities in taking over it business by said bank, including liquidation of said bank."

The meeting of shareholders held on August 12th having been called without thirty days notice, another meeting was called for September 30th, and substantially the same notice given to shareholders.

In view of the attitude of the officers of the Commercial, particularly that of Mr. Mallary, towards consolidation, we would expect to find that attitude reflected in the answer of the Commercial to the proposal of the American as to the conditions upon which its business was to be taken over by the American. The language of the Commercial's resolution, however, is less indicative of an immediate sale of assets to the American than is that of the American.

The Commercial's directors authorize its officers "to transfer to the American National Bank as cash, or, as collateral for the notes of this association (the Commercial) all the assets of this association, including cash, cash items etc.—in order to fully protect and secure said Bank for all moneys advanced or to be advanced by that Bank under the assumption and payment of its deposits, bills payable, and other liabilities of
235 this association."

That is to say, the officers of the Commercial are authorized to comply with the first two conditions

of the American to the full extent of the assets of the Commercial. At this time, however, the American had not advanced any money, certainly none of consequence. There was no definite amount due, to be paid by a transfer of assets as cash, or to be evidenced by a note. This authority of the officers was intended to be exercised in the execution of the "general purpose" evidenced by the resolutions. The Commercial anticipating that the American would almost immediately be called upon for large advances to care for the withdrawals of deposits, and other pressing debts,—the Commercial at the time being overdrawn on its accounts with other banks more than $73,000.00—and doubtless influenced to some extent by a desire to have the assets held by the American as pledgee, so as to provide against any interruption of the plan agreed upon by losing control of the assets through a receivership or otherwise at once through its Board of Directors transferred, assigned and delivered all its assets to the American to fully protect and secure said bank for all moneys advanced or to be advanced. So intent were the officers of the Commercial in keeping control of the assets and having them realized upon in the manner agreed upon, and at the same time realizing that they had transferred all the assets as security for advances when only a portion had been demanded, and that they had provided for the payment of advances by a portion of the assets as cash, they made special provision in the 6th paragraph of the Contract of August 11th, that in the event of interruption of liquidation for any reason beyond the control of the American, that bank should hold " all of the assets of the Commercial National Bank as security for the advances which may have been made by it up to the time such liquidation may be so discontinued."

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The acceptance of the American's offer by the Commercial completes the directors' agreement, so far as the transfer of assets and the assumption and promise to pay on demand of liabilities, are concerned. Notwithstanding the transfer of all assets to the American as security, the option is reserved to transfer as cash assets sufficient in amount and value to transfer as cash and secure the advances made by the American, and the Commercial's officers were authorized to make such transfers. As the account was afterwards kept between the two banks the amounts advanced by the American showed on its books as an overdraft against the Commercial. It was apparently the purpose of the parties therefore that instead of covering such overdraft by note or notes, the Commercial's officers might transfer sufficient assets as cash from time to time to pay the overdraft, or an amount sufficient to leave a balance in favor of the Commercial.

In the recital of the action of the Commercial's directors in the preamble to the contract, this option was foreclosed, no reference being made to a transfer of assets as cash. From which it may be assumed that in carrying out the "general purpose" of the parties, it was decided not to make or accept transfer of assets as cash. A reason for this may be found in the fact that at the time of the execution of the contract the American had already advanced more than three hundred thousand dollars, and had collected from the "loans and discounts", the principal assets of the Commercial, only about $14,000.00. If the American had the right to demand a transfer of assets as cash to protect such advances and at the same time to place its own
237 valuation on the transferred assets, an injustice might be done the Commercial's stockholders. As said it was also contemplated that the Com-

mercial should give its notes for the advances. The evidence shows that this was not done, but that the account showed an overdraft against the Commercial. Reference to the recital of the action of the Commercial's directors in the contract will also show that all reference to the officers of the Commercial giving notes is omitted.

The resolutions construed in connection with the evidence showing the situation existing at the time they were adopted, clearly indicate that the agreement between the parties was that the assets of the Commercial were transferred and assigned to the American as security.

If there was a consolidation effected between the two banks by sale of all the assets of the Commercial to the American and an assumption by the American of all the Commercial's liabilities, it would seem that all provisions of the resolutions relating to advances were superfluous. In that case the assets and liabilities of the Commercial would become consolidated with those of the American, and under Sec. 5223 R. S. be so reported to the Comptroller of Currency.

There is no evidence that the American was not able to provide for any withdrawals of deposits which might be made by depositors who wished to transfer their accounts from the American to some other bank, and if the American feared such withdrawals it must look to the other banks in Macon for temporary assistance rather than to the Commercial. The advances were needed by the Commercial because its deposits and other liabilities had not been consolidated with the American, and because it was expected that depositors would make withdrawals from the Commercial and not from
238 the American. The assets and liabilities of the Commercial having been consolidated with the American by sale, there would be no longer any occa-

sion to make references to paying the liabilities as and when due. The American, the consolidated bank, would be obliged to do this, or close its own doors. The American's losses on the transaction would not be indicated by a charge on its books against the Commercial, but by a charging off of losses and worthless bank paper, and a shrinkage of its resources.

Not only does the contract contain the provisions already referred to declaring that the American held the assets of the Commercial as security, but at the second meeting of shareholders on September 30th, their resolution distinctly states that the Board of Directors of the Commercial on August 1, 1914, "transferred and assigned to the American National Bank of Macon all of the assets of this association as security for the liabilities of this association." Lewis, cashier of the Commercial, on August 19th, 1914, writes to the Comptroller that the "assets of the association are now held by the American National Bank as security." Scott, cashier of the American, under date of August 1, 1914, advised the Comptroller that the directors of the Commercial had transferred all of its assets to the Aemrican "as security." The evidence contained many references to "consolidation," "merger" and "absorption," but in view of the plain intention of the parties at the time the directors' agreement was made, and of the construction of the agreement by both parties to it, as disclosed by the evidence, they can have but little evidential
239 value.

Construing the resolutions of the two banks in the light of the situation existing and the "general purpose" of the parties, as evidenced by what they did, it clearly appears that the assets of the Commercial Bank were transferred and assigned to the American Bank as security. This being true, the provisions of the

contract of August 11, 1914, are entirely consistent and all ambiguities appearing on the face of the instrument are removed.

The contract in paragraph 1, recites the transfer of assets to the American, and in paragraph 2, the Commercial assumes the liabilities of the Commercial, etc.

The intention of the directors' agreement was that the American should continue to make advances, even after the appointment of a liquidating agent, and should continue to hold the assets as security until all the liabilities assumed had been paid.

The recital of the Commercial's resolution in the preamble to the contract states the action of the directors of the Commercial on August 1st, and the condition under which the assets were at that time transferred to the American, that is to say, as security for advances to be made by the American. Reference to this recital is contained in paragraph II. of the contract. The contract has been twice ratified, with this provision in it, by the shareholders. As far as the action of the directors in making this agreement on the 1st is concerned, certainly so far as it was to be performed prior to liquidation de jure, such ratification by the shareholders was unnecessary.

The assets having been accepted by the American as security, and that Bank having made large advances in pursuance of the agreement it was necessary to protect it in the contract.

240 Provision was made for this protection, by declaring in the VI. paragraph that notwithstanding the fact that a liquidating agent is to have charge of the administration of the assets, nevertheless all such assets are to be held by the American "as security", and further that in the distribution of the net proceeds re-

alized the American shall first be reimbursed for advances made, before other liabilities are paid.

As already referred to, the second section of paragraph VI. was obviously an effort to strengthen the "hold" of the American on the assets in its hands in case of threatened interruption of the plan of distribution, which had been adopted by the parties as the best for all concerned. While this reason would not seem to apply with a liquidating agent in charge, yet in this case liquidation de jure did not begin until September 30th, 1914, and the record shows that during the Fall of 1914 two suits for the appointment of a receiver were filed by stockholders.

The provision as to the liability of shareholders in the VI. paragraph is perhaps unnecessary, but significant of the construction put upon the transaction between the parties at the time the contract was drawn. This provision was insisted upon by the American. If the assets had been purchased by the American, and the shareholders had been relieved of liability, in the absence of a clear provision in the contract evidencing such purchase, it would appear that the Commercial would have insisted upon a provision to the effect that in no event should the shareholders be held liable. The parties were not altogether on unequal terms when this contract was executed. While the American held the assets, yet it had advanced up to the 12th of August about $340,0000.00, and must have been interested in having the agreement carried out.

241 The provision in paragraph V. of the contract relative to the assumption by the American of the Commercial's circulating notes, under Sec. 5223 R. S. is not inconsistent with other provisions. Under that Section if a National Banking Association is in good faith winding up its business for the purpose

of consolidating with another Association it shall not be required to deposit lawful money for its outstanding circulation. The American purchased the bonds of the Commercial and assumed its circulation. This does not show that a consolidation as to other assets has already taken place, but at most means that it was understood by both parties that the Commercial was "in good faith winding up its business for the purpose of consolidating" at a later time.

In paragraph II. of the contract, the Commercial agrees to procure a resolution from its shareholders "consolidating the same with the American National Bank by the purchase of the assets of said Commercial National Bank by the American National Bank." This has not been done although the question has been submitted to two meetings of stockholders. The reason apparent from the evidence is that a valuation of the assets cannot be agreed upon by the parties. It must have been early discovered by the American's officers that the assets were not as valuable as thought to be on the night of July 31st. On the day the shareholders met, August 12th, 1914, a petition in bankruptcy was filed against E. N. Jelks, one of the Commercial's largest debtors, and whose paper was classed as "good" when the assets of the Commercial were being examined by the officers of the American. At the time of the shareholders' meeting, the American had only been able to collect about $14,000.00 from "loans and discounts" of the face value of over a million dollars,
242 and nearly a hundred thousand of which was either due or past due on August 1st. The question of sale of assets must therefore have been left open for future consideration. If the Commercial was solvent, it made little difference to the Commercial's shareholders whether the assets were held by

the American as pledgee or purchaser. Since it is apparent from the agreement that the American expected no profit out of the assets, the over-plus in either event, would go to the shareholders.

This cause for the non-action of the shareholders seems supported by the statement of Scott, cashier of the American, in his letter to the Comptroller, under date of October 21 1914, that "these assets could not be accepted by the American at face value nor at the value placed upon them by the Commercial," and by the following excerpt from the minutes of the joint committee of shareholders and directors of April 6, 1915:

"The desirability of selling the American National Bank all of the unpaid notes at an agreed upon valuation was discussed at some length, and it was decided that the committee from the Commercial National Bank would consider the matter of placing a value on the separate items with a view to recommending to the stockholders that this plan be adopted." (See pp. 50, 62-3 of this report).

Although liquidation and consolidation by sale of assets were contemplated, the agreement entered into by the two banks through their directors for the purpose of enabling the Commercial Bank to procure funds to pay its obligations, as herein stated, was not dependent upon such contemplated liquidation and consolidation.

The agreement was one within the power of
243 of the directors of the Commercial to make.

"While the bank was in active operation, its liquidation not having been determined upon by its shareholders, it was capable of incurring obligations for which its shareholders would be responsible under the statute."

Am. Nat. Bank v. Commercial Nat. Bank, 254 Fed. 256 citing, Schrader v. Manufacturers' National Bank of Chicago, 133 U. S. 67; Wyman v. Wallace, 201 U. S. 230.

After the removal of the Commercial's business to the American National Bank's building, and before the liquidation of the Commercial National Bank had been formally determined upon by its shareholders, although the Commercial was winding up its affairs in contemplation of liquidation, its status was not that of a liquidating bank. Am. Nat. Bank vs. Com. Nat. Bank, supra.

Two of the allegations of the amendment to plaintiff's bill have not been sustained by the proof. One is that it was found impracticable to give notes for the advances made by the American and that by agreement the account was carried as an overdraft against the Commercial. The other is as to the resolution authorizing the sale of the Commercial's building.

That notes were not given "as had been contemplated by the resolution" is a circumstance which may
244 be considered in connection with other circumstances going to show that there was no indebtedness on the part of the Commercial to the American, thus supporting the contention of the defendants. At the same time if an indebtedness actually existed, it is immaterial whether it was evidenced by a note of the Commercial or by an overdraft. If there was no indebtedness, and the entry on the American's books that a certain amount is "due the American Bank", meant that nothing was due, it would be equally true that a note evidencing such indebtedness would also mean that in fact nothing was due to the American.

It also true if the plaintiff could have shown that the directors of the Commercial in the resolution authorizing the sale of the banking house directed that the proceeds be credited on the indebtedness due by the Commercial to the American, it would have been another circumstance showing that the directors recognized that the Commercial was indebted to the American. As a matter of fact the proceeds were applied in reduction of the alleged indebtedness of the Commercial. The fact that such a provision was not contained in the resolution can hardly be considered as supporting the defendant's contention, in the absence of evidence that such provision was proposed by the American and not accepted by the Commmercial because not expressing the truth of the transaction. The evidence is that the original resolution has been lost, and the parties do not remember that the provision referred to was in it as adopted. Mr. Dure says the chances are that he would not have paid much attention to the "verbage" of the resolution in any event.

245 CONCLUSIONS OF LAW.

From the evidence and the law applicable to the same I conclude as follows:

I.

On August 1, 1914, the Commercial National Bank and the plaintiff, the American National Bank, through their Boards of Directors, respectively, entered into an agreement, under which the plaintiff agreed to assume and undertook to pay all of the labilities of the Commercial National Bank when and as the same should be.

presented for payment, and as security for the sums advanced, and to be advanced, the Commercial National Bank, under a resolution of the Board of Directors thereof, at a meeting held on August 1, 1914, transferred assigned and conveyed to plaintiff all of its assets of every kind and character, including its cash on hand, bills receivable, stocks, bonds and securities, its banking house and other real estate, and all other assets.

This agreement was afterwards reduced to writing and duly executed by the Commercial National Bank and the American National Bank, through their respective officers, and was thereafter ratified by a two-thirds vote of the shareholders of the Commercial National Bank.

246 2.

"The American National Bank's obligation to pay the Commercial National Bank's depositors and other liabilities when and as the same were presented for payment was effective from the time the contract was made and was not dependent or contingent upon the contemplated closing and liquidation of the Commercial National Bank," or upon its consolidation with the American National Bank by sale of assets "being determined upon by the shareholders of the Commercial National Bank."

3.

At the time the contract was made, "the Commercial National Bank was in active operation, its liquidation not having been determined upon by its shareholders," and "it was capable of incurring obligations for which its shareholders would be responsible under the statute."

4.

"Insofar as the contract obligated the American National Bank to take care of the liabilities of the Commercial National Bank prior to the latter being closed and put into liquidation, it was one capable of being made by the two banks acting through their respective boards of directors and managing officers without being authorized or ratified by a vote of the shareholders of either."

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5.

"By the terms of the contract the American National Bank obligated itself to continue to pay the Commercial National Bank's depositors and other liabilities when and as the same were presented, after the latter went into liquidation and was closed.'

6.

"The American National Bank, while the Commercial National Bank in the customary way was transacting business as an active banking institution, so made payments for it and at its instance or request that a claim or demand was created against the last named bank for which its shareholders are by the statute made individually responsible to the extent of the amount of their stock."

(The above quotations are from opinion in American Nat. Bank vs. Commercial Nat. Bank, 254 Fed. 356-7).

7.

In carrying out the obligations of said agreement and contract, the Commercial National Bank became

indebted to the American National Bank, in the amount hereinafter stated. Such indebtedness, is a contract, debt or engagement of the Commercial National Bank, within the meaning of the Acts of Congress imposing upon the shareholders of National Banking Associations liability for the debts, contracts or engagements of such associations.

248 CONCLUSIONS ON OTHER ISSUES.

Issue No. 7 Main Case.

Can the American National Bank maintain this suit, or must it abate by reason of the voluntary liquidation of said bank?

My conclusion is that the American National Bank can maintain this suit.

249 SPECIAL ISSUES.

Special Issues Nos. 1 and 2.

T. C. Parker and P. D. Todd were both adjudicated bankrupts and filed schedules. Neither scheduled the debt or liability sued upon in this case. Both have been discharged. The managing official of the American National Bank had actual knowledge of the pendency of both bankruptcy cases, within twelve months after the petitions were filed, before any dividends were paid, and in time to avail itself of the benefits of the law. It was apparent to the officers of the plaintiff within twelve months after the adjudication of said

bankrupts that there would be a deficiency between the assets of the Commercial National Bank as liquidated, and the liabilities of said Bank paid or assumed by plaintiff, amounting to the par value of the outstanding stock of said Commercial National Bank.

From the above facts, which are not disputed, I conclude that,

T. C. Parker and P. D. Todd, shareholders of the Commercial National Bank, are discharged and relieved of liability by reason of their discharges in bankruptcy.

250 Special Issue No. 3.

Is John F. Lewis, a shareholder liable on 150 shares of stock held as collateral but standing in his name?

From the evidence, and the law applicable thereto, I conclude:

The one hundred and fifty shares in question were originally issued to John F. Lewis and have continued to stand in his name on the books of the bank. He has received dividends thereon regularly. So far as the books of the Commercial National Bank were concerned, it did not appear that E. N. Lewis was the true owner and that the stock was held by John F. Lewis as collateral to a note of E. N. Lewis, given for money borrowed from John F. Lewis for the purpose of purchasing the stock. John F. Lewis permitted the stock to stand in his name and received the benefit thereof. He is estopped to deny that he is a shareholder.

"One to whom stock has been transferred in pledge or as collateral security for money loaned and who ap-

pears on the books of the corporation as the owner of the stock is liable as a stockholder for the benefit of the creditors."

Germania National Bank v. Case, 99 U. S. 628, 25 L. Ed. 448.
Pauly v. State Loan & Trust Co., 165 U. S. 606.
Anderson v. Phil. Warehouse Co., 111 U. S. 479.
Chatham Bank v. Brobston, 99 Ga. 801.
Scott v. DeWeese, 181 U. S. 202.
14 Corpus Juris, Sec. 1577, p. 1016.

251 The defendant, John F. Lewis, is therefore liable as a shareholder on the one hundred and fifty shares of stock claimed by him to be the property of E. N. Lewis and to have been held by him as collateral.

The evidence on this special plea will be found in Sec. 3 of the Record, pp. 6, 10-27, 28-37, and documents. It shows the following fa-

The Commercial National Bank on August 20, 1912, adopted a resolution for an increase in its capital stock of $100,000. E. N. Lewis, its cashier, applied to John F. Lewis, for a loan of $18,000.00 to enable him to purchase 150 shares of the new issue, the stock when issued to be held by John F. Lewis as collateral security. John F. Lewis agreed to make the loan and accept the stock as security. E. N. Lewis drew a draft on John F. Lewis for $18,000.00 which was paid by John F. Lewis. When the stock was issued, the Bank issued it directly to John F. Lewis and not to E. N. Lewis. The certificate was forwarded to John F. Lewis who attached it to the draft. Three dividends on the stock were

received by John F. Lewis, and the amounts credited on the draft. On January 1, 1914, E. N. Lewis executed his note to John F. Lewis for $18,450.00, and thereafter this note, with the certificate of stock attached, was held by John F. Lewis, as a renewal of the loan. One dividend was paid in June, 1914, and the amount credited on the note. The certificate of stock was originally issued by the Bank in the name of John F. Lewis, and has continued to stand on the books of the Bank in his name ever since.

252 Special Issue No. 4.

Is Defendant Mary Virginia Daniel relieved of liability because of her minority?

The evidence on this issue has not been submitted by the above defendant.

Special Issue No. 5.

Is Defendant Guy Armstrong entitled to plead in abatement the suit pending in the Suprerior Court of Bibb County, Georgia, in which he seeks to cancel his stock subscription on the ground of fraud?

Mr. R. Douglas Feagin, attorney for the defendant Guy Armstrong, has written to me the letter following:

"The State Court has decided all questions for Mr. Guy Armstrong different from those raised by the other stockholders in the suit in the U. S. Court in which you are master. We will therefore not care to introduce any evidence specially for Mr. Armstrong further in that case, but will stand on that already introduced

in the case, and such other evidence as may be offered along lines common to all the stockholders."

No evidence having been introduced on this special issue, and in view of the above letter, I conclude that The defendant Guy Armstrong is not entitled to plead in abatement the suit pending in the Superior Court in which he seeks to cancel his stock subscription.

253 Special Issue No. 6.

Should the plea of plene administravit filed by Mrs. Mamie H. Haley, administratrix of Herbert F. Haley, deceased, be sustained?

The evidence on this issue shows that the only assets coming into the hands of Mrs. Mamie H. Haley, Executrix administratrix of Herbert F. Haley, deceased, consisted of $19,907.29 insurance, $22.16 in cash, 5 bonds of the Mexican and Orient Railroad Company, a watch, tie clasp and two rings. There are judgments against the estate of about $100,000.00. After paying taxes and about three of the judgments, there will be more than $50,000. of judgments that will not participate in the distribution of the assets. The assets have been consumed or paid out with the exception of certain funds held to await the determination of a controversy between some of the early judgments. (Testimony of M. D. Jones, Sec. 6, p. 1, and report of Auditor in case of Mrs. M. H Haley, admx. vs. Rutherford Investment Co., petition for direction).

It appearing that as to any claim or demand that plaintiff may have against the said Herbert F. Haley or any judgment that could be rendered in this case,

she has fully administered all the assets of said estate that came into her hands as executor, and that there are no assets in her hands, which under the law could be made liable for the payment of any decree rendered in this case, I conclude that the plea of Mrs. Mamie H. Haley, executrix of the estate of Herbert F. Haley should be sustained.

254 Special Issue No. 7.

Is Mrs. Julia S. Tindall liable individually for the stock standing in her name as guardian, or in the estate of her wards solely liable?

I find that under the law, Sec. 5152 R. S. U. S. that Mrs. Julia C. Tindall is not liable individually for the stock standing in her name as Guardian.

I further find that the guardian has no funds in her hands belonging to the wards in whose name the stock was issued, and that the wards have no estate.

Respectfully submitted,

J. N. TALLEY, Master.

255 REFERENCES TO EVIDENCE SUPPORTING FINDINGS OF FACT BUT ON ACCOUNT OF LENGTH OF EXCERPTS NOT SET OUT IN IMMEDIATE CONNECTION WITH THE FINDINGS.

256 (3) Negotiations between Mallary and Taylor.

The preliminary negotiations leading up to the examination of the Commercial's assets by the officers of the American and the adoption of the resolutions of August 1st, were had between E. Y. Mallary, president of the Commercial, and R. J. Taylor, president of the American. These negotiations can be best understood from the following excerpts from their testimony:

Testimony of E. Y. Mallary, direct. (Sec. 4, pp. 2-5).

"Q. Did you have any conversation with Mr. R. J. Taylor during the early summer of 1914, with reference to the Commercial National Bank and the American National Bank?

A. Yes, sir.

Q. State what it was.

A. I told Mr. Taylor that I had been thinking about it a good deal, that I never did particularly like the banking business, and had considered discussing with him the question of consolidating or merging the Commercial National Bank and the American National Bank. He said he was very much interested in it. Well, I told him then—when we discussed it as some length—I told him I would prefer making the merger in the Fall; I thought by that time we could get in better shape. I particularly mentioned to him that we had

loaned pretty heavily to certain parties, and I thought we had very good promise of getting them materially reduced, and then the bank would be in good shape. He then said he would prefer to do it in the Fall, that at that time he would have more money on hand, and would be in better shape to carry the deal through.

257 Q. Mr. Mallary, when was it that you took up with Mr. Taylor the transaction which eventuated in the resolutions of the boards of directors of the two banks of August 1, 1914?

A. My recollection is it was Thursday night (July 30th). I went to see Mr. Taylor, and told him I understood that there were some rumors in town that our bank was needing some money, and stated the case to him; and Mr. Taylor said then that he thought we had better consummate the deal we have got in mind now.

Q. What deal did he refer to?

A. The merger of our bank with the American National Bank. I told him I rather agreed with him, and asked him what time he would go into the matter, and we agreed we would take it up on Friday night.

Q. Mr. Mallary, was that conversation and these negotiations connected with any application for a loan?

A. No, sir. It was carrying out the plan that we had agreed on, except we changed it from the Fall to that night to go into it—that is the only difference.

Cross Examination. (Sec. 4, pp. 20-24).

Q. Mr. Mallary you referred to a conversation had with Mr. Taylor in the early Summer of 1914, I don't understand that you agreed with Mr. Taylor at that time on any terms or conditions under which a possible consolidation of the two institutions might be made, did you?

A. No. We did not go into any of the details.

Q. It was a fact that the Commercial did need ready money?

A. Yes, we did need some money.

Q. And wasn't that the real reason for hurrying up the proposition with Mr. Taylor?

A. That was not the real reason no, sir.

Q. Did you not say on direct examination
258 that Mr. Taylor said it would not be best to postpone it any longer?

A. Not that exactly, no, sir. I said I told him of these rumors and that we discussed the matter about that, and that in view of the fact that these rumors had gotten out, and of course might cause a run on the bank, we had better take up the question of consolidation at once, that is the way it came about."

Testimony of R. J. Taylor, direct. (Rec. Sec. 8, pp. 3-6).

"Q. Mr. Mallary in his testimony referred to a conversation that he had with you in the Summer of 1914 in which there was some discussion of a possible consolidation between the Commercial National Bank and the American National Bank, do you recall any such conversation as that?

A. Well, yes, I think there was something of that kind said. Mr. Mallary and Cobb came to my house a second time—

Q. That was after the Jelks' loan was made?

A. After the Jelks loan was made, and I think that was the night something of that kind was said.

Q. Give us, as near as you can, your recollection of that conversation, Mr. Taylor?

A. Well, Mr. Park that as I recall was the night before that we went through the affairs of the Commercial National Bank—July 30th.

Q. Do you recall any earlier conversation than that in which a proposed consolidation of the bank was discussed?

A. No, sir, I do not.

Q. Tell us what occurred that night, the 30th?

259 A. Well as I recall, Mr. Mallary or Cobb, or both, said that they needed some more money—my recollection is it was $50,000.00—I will not say positively, and that if I would arrange for them to get that amount, they would—could get through with their affairs without any trouble, they thought—in other words, within 30 days I think they expressed it, they would begin to get in collections and would be much easier. Mr. Mallary stated however my bank is in good shape and all right, just simply said that there were some withdrawals that I was just not in a position to take care of and other demands that would likely come on him in a few days.

I think that was the night probably, Mr. Mallary made a statement like this, as I recall; I want to retire from the banking business and give my time to some other matters and he would like to talk that matter over with me or take it up with me in the Fall, that is my recollection of his statement.

Q. Was there or not any agreement as to consolidation that night?

A. No, sir, there was not.

Q. Was there any thing more than the statement you have made?

A. I do not recall anything else but that.

Q. Then what was the next you heard of the affair, Mr. Taylor?

A. Well, if I may be allowed to express,—that night I suggested to Mr. Mallary if his bank was in any wise bad condition, I would suggest a meeting of the clearing house banks and take it up with the banks and discuss it with a view of of course taking care of his bank and doing what was proper and his reply was he would rather not do that, he felt friendly to the American National and thought we were friendly to him and he would rather for us to handle it if it could be done—it was suggested—now I don't know whether he did it or I did it, that we go through the affairs of his bank the next night and I agreed to appoint a committee from our directors that would do so. I refused to make the loan of $50,000. that night. "The question of consolidation, he says we will be glad to consolidate, or want to discuss the question of consolidation, I don't remember what was said about it, neither one of us discussed it but very little,—it was no time for consolidating banks at that time, we could not tell what thirty days would bring about." (Sec. 8, pp. 38-9).

260

261 (e) Parties in Charge of Commercial's Business at American's Building.

In connection with the character of the services rendered by Lewis and Souder, and the persons referred to as the Commercial's employees after the assets of the Commercial were moved to the American National Bank building, as heretofore described, the following pertinent testimony should be considered.

W. T. Anderson, a member of the finance committee of the Commercial National Bank, testifies that after the adoption of the resolutions by the two banks on

August 1st, he had a conversation with R. J. Taylor, president of the American National Bank, in part as follows:

"I told Mr. Taylor that the Commercial National Bank had gone out of business and that it would be a great hardship upon a number of the employees to be suddenly thrown out of work and that if it were possible for him to utilize them in some way that I thought it would be an act of justice and fairness, and I urged that upon him, and he told me that it was his intention to do so as far as possible." (Anderson, Sec. 4, p. 107).

He further says that after the removal of the Commercial's assets to the American he had no knowledge "of the method of keeping the account, or handling the assets and affairs of the Commercial National Bank by the American National Bank." (Anderson, Sec. 4, p. 108).

Dure, another member of the finance committee, testifies that the finance committee of the Commercial "ceased to function" after August 3rd; that he did not know what system of accounting was adopted by the banks, and that so far as he knew the officers and directors of the Commercial National Bank did not undertake to exercise any control over the work of E. N. Lewis after the affairs of the Commercial were moved to the banking house of the American. (Dure, Sec. 4, pp. 66-7).

262 E. Y. Mallary, president, testifies that he went down to the American National Bank building and stayed about ten days at the request of R. J. Taylor, for the purpose of holding the depositors for the American; that he exercised no supervision over Lewis and Souder; was not consulted about

the methods of accounting; that J. J. Cobb, active vice-president of Commercial "did not stay around there at all." (Mallary, sec. 4, pp. 10, 13, 14). He further says that prior to the removal of the assets to the American he did not have anything to do with the details of the operation of the Commercial National Bank, that "the keeping of accounts and detail of handling the business was under the direction principally of Mr. Lewis and under the general control of Mr. Cobb." (Sec. p. 48).

R. J. Taylor, president of the American, referring to the method of handling accounts and keeping books, says: "I asked myself that Mr. Hillyer take charge of that branch of the business—look after it—keep that somewhat under his supervision." (Taylor, Sec. 8, p. 20).

L. P. Hillyer, vice-president of the American, testifies that he returned from a visit to New York on August 5th and found the Commercial's assets and employees in the rear portion of the American's banking room, and "immediately went back there to look after the affairs of the Commercial" and referring to Lewis and the Commercial's employees, says that he "by degrees let them go as the business decreased." Mr. Hillyer was asked "who had general charge of that force," and replied, "I did." (Hillyer, Sec. 7, p. 40-1).

DeBorde says that he received instructions from Lewis, Taylor, Hillyer and Scott, and using his language, "Mr. Hillyer bothered me more than anybody else; he was butting in there every five minutes about something. They all told me different things and I did whatever they said do. Mr. Lewis was the one that we would go to to ask questions. The first few days
263 he was there with us more than anybody else." Lewis told the Commercial's employees under

what conditions they could receive deposits. (DeBorde, Sec. 4 147, 149, 167). Souder says he received his directions from Lewis, (Souder, Sec. 3, p. 2), and Karsten, an employee of the American says "E. N. Lewis was acting right on, as cashier, practically in the same capacity." (Karsten, Sec. 7, p. 77).

(f) Method of Book Keeping in Case of Sale of Assets by Bank.

As has been heretofore stated the method of book keeping in use before August 1st by the Commercial National Bank was continued in use after the removal to the American's building.

In the case of an ordinary sale of assets of one bank to another bank, proper book keeping would require that all accounts of the selling bank to be transferred to the books of the purchasing bank, that no entries be made on the books of the selling bank, and that the old books be retained as part of the permanent records. (Creed Taylor, Sec. 1, pp. 193-5).

Certain expert witnesses were asked as to the method of book keeping in case of a sale of assets by one bank to another bank, with the obligation on the purchasing bank, after realizing upon the assets, and paying the expenses thereof, to pay over the amount representing the excess realized over liabilities to the shareholders of the selling bank, and their testimony will appear from the following excerpts:

Leon S. Dure, testified, (Sec. 4, pp. 65-6):

Q. Are you familiar with the banking business, and accounting?

A. Fairly so, yes, sir.

Q. How much experience have you had in connection with banks and banking business?

A. About twenty or twenty-five years.

Q. I will ask you, Mr. Dure, whether or
264 not in your opinion, if there was a contract of sale of the assets of the Commercial National Bank to the American National Bank with an obligation on the part of the American National Bank to account to the shareholders of the Commercial National Bank for any over-plus of realization on assets over payment of liabilities, after deducting the expenses of the administration or liquidation, it would have been necessary to have kept these accounts as they were kept, or to have adopted some system of accounting that was the equivalent of it.

A. I do not know any more simple plan than the one that was adopted."

Creed Taylor, a banker and accountant, testified:

"Q. I will ask you, Mr. Witness, if the affairs of the Commercial National Bank were administered by the American National Bank, under a plan or agreement whereby after the administration of the affairs of the Commercial National Bank any over-plus arising from that administration—that is, assets over liabilities,—was to be due and payable to the stockholders of the Commercial National Bank—wouldn't it have been necessary, under these circumstances, to keep this administration substantially as it was kept, in order to tell whether or not there would be an over-plus and, if so, how much?

A. Sure.

Q. They would have to keep that administration substantially as you saw those records kept?

A. Absolutely."

R. C. Souder, the assistant cashier of the Commercial, testified:

Q. Now, in administering the affairs of the Commercial National Bank, regardless of the object or
265 nature of the transaction between the parties, if there was an obligation at the end of the administration to account for the excess of assets over liabilities, substantially these same records had to be kept, wasn't that true?

A. I should think so, yes, sir.

Q. As they were kept?

A. Yes, sir. (Souder Sec. 3, p. 31).

266 (d) The Patterson Suit.

On November 3rd, 1914, Albert L. Patterson and J. W. Payne filed a bill for injunction and receiver, in the United States District Court at Macon against the Commercial National Bank, its directors, the members of the stockholders' committee, and members of a special stockholders' committee of three appointed by the stockholders at their meeting of September 30th, 1914, to investigate the duties of the stockholders committee and fix their compensation. The answer is filed on behalf of the Commercial National Bank, W. T. Anderson, Oscar Bradley, J. J. Cobb, E. N. Lewis, and others who aver themselves to be directors, and John J. McKay, A. L. Dasher Sr., L. H. Burghard, and C. L. Anderson, who were stockholders but not directors. The Answer is signed by Jordan & Lane, solicitors for the various named defendants, and by A. W. Lane, of counsel. Mr. Lane had for years been the regular attorney for the Commercial National Bank. The answer is verified by J. J. Cobb, vice-president of the Commercial

National Bank. The answer contains the following averments which are regarded pertinent to the present inquiry:

"These respondents admit that the assets of said Bank (Commercial National Bank) were turned over to the American National Bank as stated in said paragraph, but deny that the Commercial National Bank guaranteed that the total amount collected from said assets would be sufficient to reimburse said American National Bank as stated in said paragraph.

"By way of fully answering the allegations of said paragraph and for a full, definite and accurate explanation of said allegations as stated by complainants, these respondents say that when it was made known to the Board of Directors of the Commercial National Bank by the officers and finance committee thereof, that the bank was carrying a good many loans,
267 amounting in the aggregate to a considerable sum of money, and some of which were secured by assets that were not of a liquid character and could not be readily converted into money, and that the bank would be in need of money to meet the demands and obligations of its current business, it became imperative that an arrangement be made to protect the depositors and creditors of said bank and also the stockholders thereof, and which could only be done by securing a reasonable time in which to convert the assets into money without sacrifice of the same to the loss of all parties at interest.

"The officers of the bank had wisely gone into the affairs of the Commercial National Bank with the officers of the American National Bank, and it was determined that the wisest and safest method to pursue was to liquidate the affairs of the bank through the Ameri-

can National Bank, as provided by Sections 5220, et seq., of the Revised Statutes of the United States.

"To carry out this purpose, a called meeting of the directors of said bank was held on August 1st, at which a resolution was passed by the Board of Directors to go into voluntary liquidation as provided by the statutes of the United States, and the officers of said bank were authorized to transfer to the American National Bank all the assets of the Commercial National Bank, and the same were so transferred and assigned; the American National Bank assuming all liability to depositors and creditors and agreeing to account to the shareholders of the Commercial National Bank for all overplus remaining after so doing.

"These respondents further aver that a meeting of the stockholders was called for August 12, 1914, under a notice sent out August 1st. The said stock-
268 holders of the Commercial National Bank, in answer to said notice, convened on the 12th day of August, there being present in person and by proxy more than 2600 shares out of the total 3000 shares.

"The stockholders of said bank in their meeting on August 12th, after considering the situation with reference to the affairs of said bank, unanimously passed a resolution ratifying and approving the action of the Board of Directors on August 1st. * * *

"By the terms of said contract and agreement (of August 11th) the American National Bank assumed the payment of all depositors and creditors and took over all assets of said bank, as fully set out in said contract, agreeing to account to the shareholders for any surplus that remained after discharging all the liabilities to depositors and creditors of said Commercial National Bank. The said American National Bank under the terms of said agreement received no fee for

its services, and no charges are to be made against the Commercial National Bank in the liquidation of its affairs, except actual expenses.

"While the stockholders present in person and by proxy, are bound by the action of said meeting of the stockholders, held August 12th, and would be estopped from complaining in a Court of equity that the assets of the Commercial National Bank had been transferred to the American National Bank as liquidating agent, nevertheless, under the advice of the Comptroller of the Currency, that another meeting be held, after thirty days notice, etc. * * *

"Respondents, for want of sufficient information, are unable to admit or deny whether or not the assets
turned over to the American National Bank
269 will be sufficient to pay off the amount advanced to depositors and creditors of said bank.

If any assessment should be made against the stockholders these respondents say that they are advised that no receiver is needed, as a matter of law to collect an assessment upon the stockholders in said Commercial National Bank; but wherever a legal right exists as to such assessment, the liability may be enforced at the instance of any creditor in a suit instituted for said purpose in the manner made and provided by law in such cases.

The American National Bank is in possession of the physical assets of the Commercial National Bank, and should be permitted to collect and apply the proceeds of same in accordance with the terms and provisions of said contract hereinbefore referred to."

270 Communications Between the Banks and Comptroller.

The official communications between the two Banks and the Comptroller of Currency, particularly those written after the assets of the Commercial National Bank had been transferred to the American National Bank and before the latter Bank had been formally appointed liquidating agent of the former, are material and of value in determining how the parties regarded the assets as being held by the American National during the period named. These communications are copied into the stenographic record (Sec. 7, pp. 86-103 120-127) and the material portions thereof are contained in the following excerpts:

Letter from Cashier of American National Bank to Comptroller of the Currency, dated August 1, 1914:

"This Bank by resolution of its Board of Directors has assumed the liabilities of the Commercial National Bank of this City, contained in a statement of liabilities furnished by the Commercial National Bank, and including deposits, bills payable, and other obligations.

The exigencies of the situation were such that the Directors of the Commercial National Bank, as security for such advances as this Bank will be called upon to make hereunder, have transferred to this Bank all of the assets of the Commercial National Bank. This was done in contemplation of formal voluntary liquidation of the Commercial National Bank by consolidation with this Bank, but without issuing stock in this Bank to the stockholders of the Commercial National Bank. A meeting of the stockholders of the Commercial National Bank has been called for August 12, at which time it

is expected that formal action will be taken for liquidation and consolidation.

271 In the meantime, announcement has been made that all checks drawn against deposits in the Commercial National Bank will be honored upon presentation at this Bank, and the business of the Commercial National Bank will be taken over as far as possible; the liabilities of the Commercial National Bank amount to approximately $1,000,000.00, and its resources appear to be sufficient to discharge these liabilities, although that Bank is without ready money or quick assets available for that purpose.

Letter from Comptroller to President American National Bank dated August 3, 1914:

"Advice has been received at this office of the absorption of the Commercial National Bank of Macon by your association. Please state the facts in the case."

Letter from President of American National Bank to Comptroller, dated August 5, 1914:

"I am in receipt of your favor of the 3rd instant, which crossed in the mail a letter written by our cashier to the Comptroller, explaining as far as possible the details of the absorption of the Commercial National Bank of Macon by this association.

The directors of this association made a careful examination of the assets of the Commercial National, and were fully convinced that the assets were amply sufficient to pay all of the liabilities, although

272 the capital stock may be somewhat impaired.

The agreement between the two associations was made by their boards of directors, the Commercial National being without sufficient cash resources to safely continue in business.

It is proposed to liquidate under Sections 5220 and 5223 U. S. R. S., and a meeting of the stockholders of the Commercial National Bank has been called for August 12th, in order that the action taken by the directors may be ratified and the liquidation proceeded with under section 5220. No provision will be made for issuing stock in this association to the stockholders of the Commercial National Bank, but the assets, after paying all liabilities, will be disbursed pro rata to the stockholders.

Will you be kind enough to inform me whether or not the Department will permit this Bank to act as liquidating agent."

Letter from Comptroller to Cashier of American National Bank, dated August 6th replying to Cashier's letter of August 1st:

" * * * your statement being noted that the assets of the Bank first mentioned were transferred to the American National Bank, and liabilities assumed by the latter in advance of formal action by the stockholders of the Commercial National Bank. * * *

An examination of the assets transferred to your Bank from the Commercial National Bank will be required, which matter, together with other details of the consolidation, can be taken up when Mr. Hillyer, vice-president of the American National Bank, visits this office."

273 Letter from President American National Bank to Comptroller, dated August 8, 1914:

"We are pleased to advise that the taking over of the assets of the Commercial National Bank and the

assumption and payment of its liabilities has proceeded quite satisfactorily, and we have no doubt that the shareholders at their meeting on the 12th inst. will authorize the voluntary liquidation, and will ratify the contracts made by the directors."

Letter from Comptroller to President of American National Bank, dated August 12, 1914:

"You are advised that in view of the fact that the assets of the Commercial National Bank of Macon have already been transferred to your bank, no examination will be made at this time in connection with the consolidation of the two associations, but all assets improperly taken over should be eliminated as soon as possible."

Letter from Cashier of American National Bank to Comptroller, dated August 13, 1914.

In this letter the cashier states that he encloses resolution of directors assuming the circulation of the Commercial National Bank, a copy of resolution agreeing to act as liquidating agent for the Commercial National Bank and ratifying contract between the two banks, and advises that the American National Bank has taken over the Government moneys which were held on deposit by the Commercial, and concludes by saying,

"We shall be pleased to have the National Bank
274 Examiner examine the affairs of the Commercial National Bank in our hands as liquidating agent as soon as may be convenient."

Letter from President of American National Bank to Comptroller, dated August 14, 1914:

"We acknowledge your letter of the 12th, written by the Deputy Comptroller, in which you advise that no examination of the assets of the Commercial National Bank of Macon transferred to this association will be made at this time, 'but all assets improperly taken over should be eliminated as soon as possible.' We do not quite understand the meaning of the clause quoted. You have been furnished with a copy of the contract between the two associations, and of the resolutions passed by the stockholders of the Commercial National Bank appointing this bank liquidating agent, and authorizing it to hold all assets transferred to secure the payment of amounts advanced and assumed by this association. Kindly advise in the light of the contract and resolutions what is meant by the expression 'all assets improperly taken over.'"

Letter from Comptroller to President of American National Bank, dated August 17, 1914:

The receipt is acknowledged of your letter of August 14, in further reference to the consolidation of the Commercial National Bank of Macon with your association.

In reply you are advised that the assets of the Commercial National Bank having been transferred to the American National Bank in advance of the formal vote for liquidation, and an examination of the Commercial National Bank having been made in June last, it was decided not to make a special examination of
273 the assets purchased by your association at this time, but to make it a few months later, and in the meantime it is suggested, as stated in letter of the 12th instant, that in the event any prohibited assets were included in the items transferred to your bank, that they should be eliminated as promptly as possible

in order that, when the examination is made, the examiner will find only such assets as can be lawfully held by a national bank.

A letter has been addressed to the Commercial National Bank today advising them that it will be necessary to call another meeting of the shareholders, and again adopt a resolution placing the bank in liquidation this being required by the fact that the notice provided by the articles of association was not given, and for the further reason that it is not possible to adopt a resolution making the liquidation effective on a date prior to that on which the meeting was held."

Letter from Cashier of American National Bank to Comptroller of Currency, dated October 1, 1914:

"The receipt is acknowledged of the letter of Mr. W. J. Fowler, Deputy Comptroller, dated September 23, in regard to reporting the assets and liabilities of the Commercial National Bank of Macon which is in voluntary liquidation.

"On August 1, the directors of the Commercial National Bank by resolutions transferred to this association as security for amounts advanced and to be advanced to pay the depositors and other creditors of that bank, all of its assets, the transfer being made in contemplation of the voluntary liquidation of that bank as authorized by Section 5220 and 5221 of the Revised Statutes. Subsequently a contract was made in pursuance of this resolution between the two associations was entered into. A meeting of stockholders of the Commercial was held on August 12, at which time more than two-thirds of the total number of shareholders ratified the action of the directors,

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and passed the resolution in the form furnished by your office, providing for voluntary liquidation of the association and appointing that association as liquidating agent. This meeting, however, was held after only ten days' notice, and under advice from your office, thirty days being required, another meeting of shareholders was called, which meeting was held on yesterday, and at which meeting the action of the previous meeting was ratified, and a new resolution providing for the voluntary liquidation of the bank, and appointing this association as liquidating agent, was passed.

"Pending this action by the stockholders, we have not thought it proper to transfer absolutely and as a part of the assets of this association the assets of the Commercial National, nor to assume in toto its liabilities. The business between the two banks has therefore been handled in the following manner:

"The depositors have severally transferred their accounts to this association, or withdrawn their deposits, as they preferred. This has been accomplished by having the Commercial issue to the depositors checks for their balances, which were cashed by the American, and charged to the account of the Commercial. As the bills payable of the Commercial have matured, these have also been paid in the same way. Collections made on paper of the Commercial have been deposited to its credit with the American, and where customers of the Commercial have been taken over by the American and
277 their paper renewed, the Commercial has been given credit in the same way as though the paper had been paid in cash. In other words, the American has kept a regular account with the Commercial just as it did with any other Bank. This account ap-

pears now overdrawn something more than $500,000.00, and in our last published statement is included under the amount due from other national banks. Our statement of September 12, shows all of the assets of the Commercial which have been taken over by this association, and all liabilities which we have assumed, but does not include the assets held as collateral for the overdrafts of the Commercial, nor the bills payable and certificates of deposit of the Commercial which have not yet matured, or any of the deposits which have not been transferred to this association. While there would be no particular objection to assuming outright the remaining deposits certificates, and bills payable, we would dislike very much to treat as assets all of the uncollected paper in favor of the Commercial, and its bank building and other miscellaneous property. We would hardly know how to treat this so as to be fair to the stockholders of the Commercial, and at the same time fair to ourselves. These assets could not be accepted by us at their face value nor at the values placed upon them by the Commercial. In fact, we doubt whether the assets are sufficient to pay the amount advanced by this association, and the remaining liabilities of the Commercial, but the stockholders of that association would of course be unwilling to have so low a valuation placed upon these assets. As liquidating agent it is of course the duty of this association to get the best values for the assets which it can secure, and in our opinion the only fair way to adjust these values will be to carry the assets as we
278 have done heretofore simply collateral for the obligations of the Commercial paid by us, and as they are collected reduce our balance against the bank proportionately.

"Prior to the resolution adopted on yesterday by the stockholders, we were advised that this was the only safe and proper way to handle the matter. If in the light of the resolution placing the association in voluntary liquidation the transfer of assets and liabilities should be completed in any other manner, we shall be pleased to be advised as to how the accounts should be handled and how the assets are to be valued.

Letter from Vice-President of American National Bank to Comptroller, dated January 18, 1915:'

'As we had no form to fill out, we enclose you herein the report of the condition of the Commercial National Bank at the close of business Saturday night, August 1, 1914. We took the bank over on the morning of Monday, Aug. 3rd.

"In making out the receipts and disbursements for the quarter ending December 31st, 1914, we find this difficult to do—for the reason that while we took over the Commercial National Bank on August 3rd, and assumed all of their liabilities at that time, they opened up a window in our office and paid checks and received deposits for some days. They also collected some notes and made remittances for collections. We transferred their deposits to our books as their depositors would come in—everything being completely transferred at the present time."

279 Letter from E. N. Lewis, cashier of Commercial National Bank to Comptroller of Currency, dated August 3, 1914:

"We beg to advise you that the directors of the Commercial National Bank have called a meeting of the

stockholders of this Bank to be held on August 12, for the purpose of consolidating with the American National Bank of this City by liquidation and transfer of the assets of this Bank to the American National Bank. The exigencies of the situation were such that the directors felt justified in contemplation of action to this end by the stockholders to perfect arrangements today, by which the assets of this Bank have been actually transferred to the American National Bank, and that Bank has assumed the liabilities of this Bank, and will pay on presentation the liabilities of this Bank."

Letter from E. N. Lewis, cashier of Commercial National Bank to Comptroller, dated August 12, 1914:

'We enclose herewith:

"1. Resolution of the stockholders to place the association in voluntary liquidation, and appointing the American National Bank liquidating agent, said resolution showing the stockholders voting therefor.

"2. A copy of the contract between this association and the American National Bank, signed by the respective officers.

"3. A certified copy of the resolutions of the Board of Directors, transferring the assets of this association to the American National Bank in consideration of the assumption of the liabilities by the said bank.

"4. A certified copy of the resolutions of the stockholders ratifying the action of the Board of
280 Directors and the contract entered into between the two associations.

"5. A statement of the condition of this association at the close of business August 1, 1914, at which time the transfer to the American National Bank became effective. A detailed statement of the assets transferred and the liabilities assumed is now being prepared by Alonzo Richardson & Company, certified public accountants of Atlanta, Ga., and a copy of this statement will be furnished as soon as completed."

Letter from E. N. Lewis, cashier Commercial National Bank to Comptroller, dated August 19, 1914:

"We note your request that a detailed statement of assets transferred and liabilities assumed by the American National Bank on August 1st be forwarded with the resolution authorizing liquidation. We will endeavor to furnish the statement as directed. We also note that the resolution for liquidation cannot be made to relate back. The assets of the association are now held by the American National Bank as security for advances made and to be paid on the liabilities of this association. We understand this is proper, although the formal liquidation cannot begin until the resolution has been passed by two-thirds vote of the stockholders at a meeting properly called and held."

Filed April 24, 1920.

IRENE ELKINS, Deputy Clerk.

281 EXCEPTIONS TO MASTER'S REPORT.

And now come each and all of the defendants in the above entitled cause, and within the time allowed by the Honorable Judge of said Court, file these their exceptions—wherein for brevity the American National Bank of Macon is referred to as the American, and the Commercial National Bank of Macon is referred to as the Commercial—to the Report of J. N. Talley, Esquire, the Standing Master in Equity, filed in this cause on the twentieth (20th) day of April, Nineteen hundred and Twenty (1920) and for cause of exception show:

282 These defendants except to the following finding of the Master on page 4 wherein he states the contention of the defendants as follows:

"The defendants; on the other hand contend that under the contract the business of the Commercial National Bank was merged or consolidated with that of the American National Bank by a sale and transfer of its assets to the American National Bank in consideration of the latter Bank assuming the payment of the liabilities of the Commercial National Bank and that the American therefore took the transferred assets as purchased."

And these defendants aver that, he erred in so finding for the following reasons:

1st. This statement omits the important element of the consideration of the contract, to-wit: The American was "to account to the Stockholders" of "the Commercial" for any overplus which may remain after paying the indebtedness of the "Commercial" in full and the

expense of realizing on the assets so transferred" and the failure of the Master to embody this part of the consideration in his statement of the contentions of the defendants is prejudicial to their rights.

2nd. Because said statement does not present with sufficient clearness to the Court the several defenses of these defendants, and as it is essential to the assertion of their rights that the Court should understand on the threshold of the case their several defenses, they ask leave to set them forth fully and clearly and in pursuance of this plan and purpose these defendants says:

That the assets of the Commercial National Bank were transferred to the American National Bank on the first day August, 1914, and actual delivery of the same made on the third August, 1914, when the American took actual and exclusive possession of all its assets of every "kind and description and removed the Cash, Books, papers and portable property to its own Banking House; that said transfer and delivery were made in pursuance of a fixed and definitely expressed intention and purpose on the part of the Commercial to close its business as a Bank, which was to be accomplished as hereinafter more fully set forth by the process of voluntary liquidation, and its consolidation with the American National Bank by the latter Bank's purchase of its assets,

283 but without issuing stock in that Bank to the Stockholders of the Commercial; and in this connection these defendants show to the Court that this purpose to liquidate and retire from business had been entertained for some time, and in further and of the same, E. Y. Mallory, the President of the Commercial had approached R. J. Taylor, the President of the American in the early Summer of 1914 and conferred with him with a view of consolidating the

Commercial with the American National Bank, expressing in said conference this desire and purpose to retire from business; that the proposition was favorably received by the said Taylor who stated however, that he thought it best to carry out the consolidation in the fall. Defendants show that on or about July 31, 1914, the Commercial being in need of ready money, and not being able at that time to realize immediately on its assets the said Mallory approached the said Taylor, gave him a bank statement of the Commercial's difficulties and in view of the exigencies of the situation proposed an immediate consolidation of the Commercial with the American Bank, and the negotiation thus began, resulted in the adoption on Aug. 1st, 1914, of the resolutions by the respective Banks; Defendants allege in this immediate connection, that these resolutions were drawn by the joint action of the attorneys of the two Banks and in pursuance of the plans agreed upon in the several conferences of their officers, and the character and plan adopted for the liquidation and consolidation of the two Banks was taken from Pratts Digest, which it is admitted was used in the preparation of the resolution and in which it is declared that a consolidation of one National Bank with another by the purchase of its assets by the latter Bank, but without issuing stock therein to the stockholders of the former Bank is a sale pure and simple; that under the terms of the resolutions, the officers of the American examined the assets of the Commercial carefully and after so doing, and satisfying themselves of their sufficiency to more than pay off the liabilities of the Commercial, the said officers closed the purchase of the assets and on said third day of August, 1914 took actual possession of the same, removed them to their own banking house, and began an imme-

diate process of actual liquidation by realizing
284 as rapidly as possible on said assets and paying off the liabilities of the Commercial as presented. It was distinctly understood at the time of said transfer that proceedings for voluntary liquidation of the Commercial were to be begun immediately, and on the 1st day of August, 1914, the same tax, the resolutions authorizing the transfer was made, another resolution was adopted by the Directors of the Commercial calling a meeting of the stockholders of which the following notice was mailed to each of them:

"Notice is hereby given, that a Special Meeting of the Stockholders of the Commercial National Bank of Macon will be held at the Banking House in Macon, Georgia, at ten A. M. on August 12, 1914, and that the business proposed to be transacted at said meeting is the consolidation of this Bank with the American National Bank of Macon, Georgia, by the sale of its assets to said American National Bank, and the assumption of its liabilities in taking over its business by the said Bank, including the liquidation of said Bank under Sections 5220 and 5223 of the United States Revised Statutes."

Said Notice was mailed in pursuance of the agreements made between the Banks, expressed in their resolutions and the same was done with the knowledge and approval of the American National Bank. It was also understood and agreed at the time that the Directors of the Commercial Bank were to secure a proper resolusion instituting proceedings for liquidation at said meeting and also one, appointing the American National Bank its liquidating agent. These defendants further show to the Court, that in view of the fact that some time would necessarily elapse before proceeding for the

voluntary liquidation of the Commercial Bank could be initiated and the American selected and appointed as its legal liquidating agent and in view of the further fact, that in the meanwhile the American National Bank would be called upon to advance considerable sums of money to pay the liabilities of the Commercial before the latter's assets could be realized upon, it was agreed that pending this delay, and to protect the American against any loss for such advances, in the event of a possible failure either in the institution of said proceedings or the appointment of the American as liquidating agent; or in the event of Court interference the assets should be then considered as having been transferred to the said Bank and said bank should retain said assets as security for such advance, and for
285 this reason and this reason alone, the language indicating that the assets were transferred as security was inserted in the Resolutions and contract. It was never intended by their use to convert the transaction into a loan, but it was distinctly understood that it was one of purchase and sale subject to the contingency hereinbefore stated. In support of this contention these defendants show to the Court that on the 11th day of August, 1914, the two Banks entered into the contract; upon which the present suit is predicated, wherein after reciting in the preamble that the assets had been transferred as security for advances made and to be made by the American for the Commercial Bank in contemplation of liquidation, as hereinbefore set out, the Commercial National Bank "transferred, assigned, conveyed and confirmed into the American all of its assets of every character and description in fee simple with warranty of title. The second paragraph provided:

"That in contemplation of the liquidation of the said Commercial National Bank under sections 5220, 5221 and 5223 U. S. Revised Statutes said Commercial National Bank by its officers and Directors will call a meeting of the shareholders of said Association to be held at Macon, Georgia, on August 12, 1914, and on the date or dates to which said meeting may be from time to time adjourned, and will procure proper resolutions by said shareholders, and a sufficient majority thereof to comply with the law in such cases, made and provided, liquidating said association, and consolidating same with the American National Bank of Macon, by the purchase of the assets of said Commercial National Bank be the American National Bank, but without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank, and ratifying and confirming the action of the Board of Directors of said Commercial National Bank as hereinbefore recited and ratifying and confirming this contract."

These Defendants specifically allege that by this stipulation both parties recognized after the elapse of seven days from the actual transfer and delivery of the assets, that it was the original intention of the parties to make a sale of the same, the Commercial to sell and the American to buy them, and that this had been effected as of August 1, 1914.

These defendants allege that in the third paragraph of the Contract, the Commercial agreed to procure proper resolutions "to be passed by said Shareholders, appointing said American National Bank as li-
286 quidating agent for said Commercial National Bank in said liquidation for consolidation as aforesaid; said liquidation to be conducted in accordance with law and under supervision of the Board of Directors

of the Commercial National Bank. These defendants alleged that by the use of the words, "said liquidation by consolidation as aforesaid" the American was to be appointed liquidating agent to carry out the purchase of said assets as set out in paragraph two.

These defendants allege that this stipulation with reference to the liquidation being conducted under the supervision of the Commercial National Bank was made in view of the obligation assumed by the American to pay to the shareholders of the Commercial National Bank any overplus that might remain, arising from realizing on its assets after paying off its liabilities and the expenses incurred in realizing on the same and that in pursuance of this provision, the stockholders' committee was appointed to represent them in this liquidation, and these defendants allege that this was done as much to protect the American National Bank as the stockholders. The plan laid down on Pratts Digest by which the consolidation of two Banks was effected by the purchase of one's assets by the other was varied by the parties to the contract in this case to the extent that the Commercial believing its assets were worth more than its liabilities, was unwilling to take less than approximately their face value and the American was unwilling definitely to value the assets, preferring to have the excess value over its liabilities, which its officers then anticipated would exist, determined by an actual liquidation. As a result it became necessary in order to secure a realization which would be free from all suspicion of negligence or impropriety, and thereby a correct accounting made of the assets that the liquidation should be conducted under the supervision of both Banks, and this explains the presents in this case of the stockholders' committee and their actings doings therein. These defendants disavow here and now that

the selection and appointment of this committee was in any manner made for the purpose of asserting title to or control over said assets, but was to protect the residuary interest they had therein and which both parties recognized.

These defendants also show to the Court that by the fourth paragraph of said contract, the Commer-
287 cial agreed that until the final liquidation and final settlement with its shareholders, it would maintain its corporate existence, and that its Directors and officers, will at all times, when called upon to do by said American National Bank execute and deliver in the name of said association all other and further writings of all kinds which may be necessary to fully effect with the transfer of said assets, the liquidation of said Association and this contract."

These defendants show that it was contemplated at the time this contract was made that further and specific transfers of real property and deposits and releases would in all probability be required and the provision was inserted in order to carry out the purpose of the parties, to fully effectuate the transfer of said assets, the liquidation of said Association and the contract" and these defendants allege and contend that in so doing the former employees did not intend to assert a claim of any title to said assets, but were simply doing at the request of the American what was necessary to perfect in them the title to the assets so transferred, and to carry out the liquidation by a consolidation of the two Banks on the terms heretofore set out.

Defendants show that by the fifth paragraph, the American in consideration of the foregoing acts and agreements of the Commercial agreed to pay all the liabilities of the Commercial National Bank and also assumed the redemption of its circulating notes and

agreed to secure the adoption of a Resolution for its Board of Directors providing for said redemption.

These defendants allege that as further evidence that the American intended to buy and did buy the assets; it agreed to assume the redemption of the circulating notes of the Commercial, and that such assumption is absolutely inconsistent both in law and fact with the relation of creditor and debtor.

Defendants show to the Court, that the sixth paragraph of the contract deals solely with the subject of liquidation. Therein the American "agrees to accept the appointment of liquidating agent of said Commercial National Bank and will proceed with all due and reasonable diligence to liquidate said association and to collect and reduce to cash all assets of said association, all of said assets to be held as security
288 by said American National Bank for all advances made by it in paying the depositors and other liabilities of said Commercial National Bank and the actual expenses incurred by said American National Bank in realizing on said assets; and after deducting from the proceeds of said assets, the actual expenses incurred by said American National Bank in liquidating said association and acting as liquidating agent and in collecting said assets and realizing upon the same it will apply said proceeds, first to repaying itself all amounts advanced by it hereunder, with interest therein at seven per cent per annum, next in discharging the liabilities of said Commercial National Bank which shall not have been paid by advances made by the American National Bank and that when all of said liabilities have been fully discharged, it will account to the shareholders of the said Commercial National Bank and from time to time pay over to said shareholders pro rata the surplus, remaining in the hands from the

proceeds of said assets, said American National Bank to account as such liquidating agent without compensation for its own services.

It being distinctly agreed and understood that in the event the said liquidation should be interrupted on discontinued for any reason beyond the control of the American National Bank, then and in the event said American National Bank shall and does hold all of the assets of the Commercial National Bank as security for the advances which may have been made by it, up to the time such liquidation may be so discontinued."

These defendants allege and contend that the purpose of said paragraph was, first, to signify and express the American's willingness to accept the appointment of liquidating agent; secondly, to adopt a plan and process of liquidation in the event the American was appointed, and third, to protect the American from loss in the event it should not be appointed liquidating agent, or in the event, the said liquidation should be discontinued for some reason beyond the control of the American. While the actual transfer was made and liquidation begun, respectively August 1st and August 3rd, it was very reasonably apprehended by the American that the resolution for voluntary liquidation might not receive the requisite two-thirds vote, or that it might
289 not be appointed liquidating agent, or if neither of these should happen, liquidation might be instituted to stop the liquidation, or it might be otherwise discontinued, and to protect the American against either or all of these contingencies the provision as to the assets being held as security for advances were inserted in the contract. In either of these events, and only in one of these situations, were the assets to be held as security.

But these defendants show to the Court that neither of these events have happened; the proceedings for liquidation were instituted and the same proceeded legally, and regularly to their completion. The American was appointed liquidating agent; and therefore the title to the assets vested by operation of law fully and completely in the American free from all contingencies as to liquidation or other causes.

Defendants show that at the meeting of the stockholders on the 12th, the action of the Board of Directors in transferring the assets to the American was ratified and a resolution adopted placing the Commercial National Bank in voluntary liquidation "to take effect at the close of business on August 1st, 1914," and another appointing the American National Bank liquidating agent, and thereupon on the 13th of August, 1914, Directors of the American in recognition of the fact that said liquidation was for the purpose of consolidating the Commercial with their Bank adopted the following resolution:

"Whereas, the Commercial National Bank of Macon, Georgia, is winding up its business for the purpose of consolidating with this Asssociation and whereas this association desires to take advantage of the provisions of section 5223 U. S. R. S., which provides that "An Association which is in good faith winding up its business for the purpose of consolidating with another outstanding Association, shall not be required to deposit lawful money for its outstanding circulation, but its assets and liabilities shall be reported by the Association with which it is in process of consolidation; therefore, be it resolved: That on consideration of the transfer to the Association by the Commercial National Bank of Macon of the Two Hundred Thousand Dollars ($200,-

000.00) in United States Bonds now in deposits with the Treasurer of the United States as security for circulation of the Commercial National Bank of Macon, this Association does hereby assume all the liability of said Commercial National Bank of Macon
290 on account of the circulation."

These defendants show to the Court that by this resolution the American recognized that the Commercial was winding up its business for the purpose of consolidation with itself and on this solemn statement availed itself of the provisions of section 5223 of the Revised Statutes, and it is now estopped from denying that the transfer was made for the purpose of consolidation; and furthermore that as the resolutions placing the Commercial in voluntary liquidation, and appointing the American, liquidating agent had been adopted on the 12th. This action of the Board of Directors of the American on the 13th was a recognition of the fact that the Commercial had complied with its obligations and the contingency on which it held the assets as security was completely extinguished, and the sale contemplated by the parties was complete.

Defendants further show that the shareholders at their meeting on the 12th of August and on the 30th of September, 1914, ratified the action of the Board of Directors in transferring the assets, but on so doing they ratified only what had been actually done as hereinbefore set forth, and nothing more; and they did not either directly or indirectly change or intend to change the transaction from a sale into a loan.

When the assets were removed to the Banking House of the American it became necessary in order to determine the excess of the assets over the liabilities to keep a set of records, embodying an accounting of the accounts realized from the assets and the expenditures of the same

such as were in the main kept by the Commercial prior to its retirement from business, and inasmuch as the pages in the books of the Commercial were not entirely used on August 1, 1914, it was both proper and economical to continue to use these records in keeping such accounting and they were so used and for this reason and purpose. In addition to the foregoing, these defendants show that the work of liquidation and realization on said assets required additional help on the part of the American, and in the natural order of things. Economy and good business judgment suggested the use of the same men who had handled the assets and books and were acquainted with the records should be
291 retained and the evidence shows that Mr. Taylor, the President of the American and the officer having this liquidation in charge immediately on the delivery of the assets employed these men on this consideration as well as because of the fact that otherwise they would have been out of employment.

In this connection, defendants show to the Court that one of the considerations moving the American to make the purchase of the Commercial was the acquisition of its business which under the terms of the resolutions it was "to take over." It was realized that a high degree of care and faith and persuasion was necessary in order to enable the American to hold this business, and to accomplish this the officers of the American arranged for Mr. Mallory to be present for a few days after August third, during which time, he arranged to bring the parties of the Commercial in touch with the officers of the American and aided them in making business connections with the latter bank.

During the progress of the liquidation it became necessary to have transfers of accounts made with the correspondents of the Commercial and Mr. E. N. Lewis,

the former Cashier of the Commercial National Bank was used for that purpose but his co-operation as well as that of Mr. Mallory, the former President of said Bank, was at the request of the American and in pursuance of the express obligation of the Commercial in the contract, to effectuate the liquidation and carry out the contract.

These defendants further show that among the assets, there was real estate which had no face value, but whose value would have to be determined and that among the many choses in action some would have to be sealed, and to avoid any complication on this line in determining the excess of assets over the liabilities, it was agreed that the liquidations should be conducted by the American under the supervision of the Commercial, whose shareholders had a residuary interest in the assets which it was their right and duty interpreted.

For this purpose a committee was appointed by these stockholders and one by the American Bank which constituted what was known as the joint committee. Of this committee, Mr. Hillyer, vice-president of the American was chairman and he had and he exercised absolute control over the liquidation and conferences between the respective committees were only held to secure the formal approval of the stockholders' committee of the
292 Commercial of the action of the American in regard to the assets and their disposal. Aside from their formal conferences, no officer of the American was consulted with the Committee of Stockholders or any former officer of the Commercial either as to method of accounting adopted by the American or the entries on the Books of either Bank in connection with the same, all of which was unknown to these defendants.

In this connection these defendants show that no officer of the Commercial was authorized by the stock-

holders' committee to bind these defendants by an act, while temporarily at the Banking House of the American and working in connection with said liquidation, but as a matter of fact they were all working during said period under the orders of Mr. Hillyer, who had the liquidation in charge, Mr. E. N. Lewis was not the Cashier of the Commercial while so working for he had been denied compensation by the stockholders' committee after August 1, 1914. And it is certain both as a matter of fact as well as law, the Commercial could not and it did not have any officers or employees after it was placed in voluntary liquidation. Its former employees and officers after said time were actually in the employment of the American as liquidating agent, and could not by their actings and doings in any way bind these defendants.

Defendants show to the Court that in this way the plan or method of liquidation was carried on by the American and for the reasons herein set forth, the former officers and employees of the Commercial became indirectly connected with the same and conferences were had with the committee of stockholders, all of which was none to effectuate the liquidation and perfect the transfer of assets.

Defendants show to the Court, that the report of the Master is unusual in its arrangement as well as its findings and it is impossible for these defendants to set forth their several defenses in any methodical and consecutive manner by exceptions to his report and hence they have set them out, as herein stated, so that the Court may understand the defenses, and having done so, they now proceed to except specially to the findings citing the evidence in support of the same.

293 II.

That the Master in his report stated and certified under subdivision 2, of Issue No. 1 and in the first of the second paragraph of page 13:

"The true condition of the bank, however, was not so good as indicated by the above statement, though in the estimation of its officers it was amply solvent."

In so finding the Master erred, in that his said finding is contrary to the evidence, and fails to correctly state the true attitude of all parties concerned with regard to the solvency of the Commercial, and is therefore, harmful to the contentions of defendants.

The Master should have found that, in the estimation of the officers of the Commercial, and also in the estimation of the officers of the American, the bank was amply solvent.

Reference is made to the reported evidence, and particularly to the following: The letter of Mr. R. J. Taylor, President of the American, of August 5, 1914, as shown on page 136 of the Master's report, and as set out in Section 7, of the record, page 88, is referred to as evidence; also letter dated August, 1914, from Cashier of American to Comptroller. See Report, pages 135 and 136.

The fact that the officers of the American thought the assets of the Commercial sufficient to protect their venture is also shown by the fact that they made a contract after being instructed to proceed no further if, upon an investigation of the affairs of the Commercial, they deemed it unsafe to proceed under the resolution.

See page 48, Section 1, of the record.

On page 6, Part 4, Mr. Mallary testified:

That after the officers of the American had spent the night examining the assets of the Commercial, he asked Mr. Taylor, if he (Taylor) was satisfied to make the deal, and Mr. Taylor stated that he was.

294 This exception is supported also by the epitome of resolution of American's Directors of August 1, 1914, together with the recital of the contract to the effect that the preliminaries and conditions in said resolution had been complied with at the date of the contract.

At page 7, Mr. Mallary testified:

That Mr. Taylor stated that he did not see any reason why the shareholders of the Commercial should not get par for their stock.

On page 36, Section 5, Mr. L. P. Hillyer indicates:

That when the American's officers examined the assets of the Commercial, he thought the assets were pretty bad; however, when his recollection was refreshed as to his previous sworn statement, he was compelled to admit that he thought they were all right, as shown at the bottom of page 55, and top of page 56, of Section 5.

On page 58, Mr. Hillyer testified:

That he began to take a new view of the Commercial's assets after the American had taken over the Commercial.

On page 29, of Mr. Taylor's testimony the evidence shows:

That he discovered sometime after he took over the Commercial that he had made a bad trade.

On page 54, Mr. Taylor admits that he stated to the shareholders of the Commercial that from information received the Commercial's stock would be worth one hundred (100%) per cent., that he did not express any contrary opinion of his own, and that he humored that report as much as possible.

See also evidence cited under Exceptions No. XXXVIII and LXXV.

III.

That the Master stated and certified in his said report, subdivision 4, and in the second paragraph on page 20, that

"The subject of consolidation was at that time of secondary importance."

In so finding the Master erred:

(1) Because there is no evidence to support such finding, and

(2) Because such finding is contrary to the evidence.

The Master should have found that the primary object of the officers of the Commercial in going to the

officers of the American was to effect a consoli-
295 dation of the two banks by a sale of assets, and in that way insure payment of all expected withdrawals by their depositors, and likewise the demands of other creditors and that the primary object of the officers of the American was also to effect a consolidation of the two banks by purchase of the assets of the Commercial, and thus secure the valuable patronage and the business of the Commercial.

The evidence here is clear.

Mr. E. Y. Mallary, Sr., and Mr. R. J. Taylor had earlier in the summer discussed the plan of consolidating the two banks.

Section 4, Record evidence, bottom of page 2, top of page 3.

At that time Mr. Taylor stated that he would perfer to make the merger in the fall. On Thursday before August 1, 1914, Mr. Mallary went to Mr. Taylor, stating that his bank was in need of money, and at that time Mr. Taylor stated that he thought it would be better to consummate the merger of the two banks now. (Pages 4 and 5). After Mr. Taylor and other officers of the American had been through the assets of the Commercial, he stated to Mr. Mallary that he was satisfied to make the deal. Mr. Mallary stated the conditions on which he would consent to the sale or merger, and Mr. Taylor accepted them.

Section 4, pages 6 and 7.

The resolution of the Commercial of August 1, 1914, Report page 7, shows plainly on its face that consolida-

tion was of primary importance, as does likewise the resolution of American of August 1, 1914, Report page 6.

In this connection see also Sections 8, pages 38, 39, and 40 of record evidence, and the "references to evidence supporting findings on fact," and more particularly subdivision 3, "negotiations between Taylor and Mallary," as filed by the Master.

296 Also in support of this exception reference is particularly made to the notice to shareholders of Commercial of the called meeting of August 12, 1914, Master's Report, pages 8 and 9; Letter of E. C. Scott to Comptroller of Currency on August 1, 1914, Report page 22; letter of E. C. Scott to Stockholders and customers of the Commercial of August 1, 1914, Master's Report, page 24; the advertisements of the American, Report page 25, and of the Commercial, Report page 26; the admission of Mr. Taylor that consolidation had been discussed. Record Section 8, pages 37 and 38; and Mr. Taylor's statement on page 40 of Record Section 8, to the effect that specific loan of $25,000.00 on July 31st, was the last time "Loan was mentioned.

It is submitted that this finding of the Master is error, and is harmful to the claims and contentions of defendants for the evidence shows that this transaction in its inception was to be a merger of the two banks by a sale of the assets of the Commercial to the American, and that accordingly it would require much stronger evidence on behalf of the plaintiff to show a departure from this original intent, and to set up the transaction as an arrangement by which one of the banks made loans or advances to the other.

IV.

That the Master stated and certified in his said Report in subdivision 3, and in the first and second paragraphs on page 18, that

"Mr. Taylor promised to appoint a committee from the officers and directors of the American to investigate the assets of the Commercial on the following night, in order to determine what, if any, assistance the American National Bank could render to the Commercial National Bank.

The subject of a consolidation or merger of the two banks was discussed to some extent during the conversation, but no terms or conditions of consolidation were mentioned."

In so finding the Master erred:

297 (1) Because there is no evidence to support such finding.

(2) Because such finding is contrary to the evidence.

The Master should have found from the evidence that the object of the appointment by Mr. Taylor of a committee from the officers and directors of the American to investigate the assets of the Commercial on the following night was to determine whether in the opinion of the officers of the American, for the contemplated purposes of a purchase by the American of the assets of the Commercial and a practical consolidation of the two banks the Commercial was in position to transfer to the American assets sufficient in amount and in value to make the American harmless and safe in the

venture proposed, to-wit: the assumption of the liabilities of the Commercial, and the discharging of these liabilities.

The Master should have found that the matter of consolidation was the primary purpose of the meeting, that the matter of giving assistance to the Commercial was only incidental; and that the assistance which was to be furnished, and was furnished, for the operation of the Commercial National Bank in its last days business, its operation on Saturday, August 1st, was through the loan of $25,000.00 on specific security, the Commercial National bank building, a separate and incidental transaction, but a transaction which R. J. Taylor characterized as the last loan which the American made to the Commercial.

In further support of this exception, these defendants refer to the portions of the evidence and of the record, and of the Master's Report cited and referred to in Exception III, next above.

It is submitted that this finding of the Master is error; is harmful to the claims and contentions of the defendants, these defendants contending that
298 the resolutions of Boards of Directors of the two banks made on Saturday, August 1, 1914, were the logical results of the plan of practical consolidation which was agreed to by the Presidents of the two banks, and based solely upon the condition that the Commercial was in position to transfer to the American assets sufficient, in the opinion of the officers of the American, to make the American safe in its assumption and payment of the Commercial's liabilities

V.

That the Master stated and certified, under subdivision 4, on page 20, of his said report, that

"The Commercial was considered solvent by Mr. Taylor, so far as creditors were concerned."

In so finding the Master erred:

(1) Because said finding did not correctly report the absolute belief and confidence of Mr. Taylor, after he and the other officers of the American had examined the Commercial's assets, that the American was safe in its purchase and venture.

(2) Because said finding is contrary to the evidence in that it limits and minimizes the confidence and belief of the President of the American as to the solvency of the Commercial, and is not a true, full and frank finding as to the belief of the President of the American.

The Master should have found that the President of the American considered the assets of the Commercial unquestionably sufficient to make the American safe in its venture.

In support of this exception, reference is made to Exception II, hereinabove, and citations and references therein made. Particular reference is here made to the letter of R. J. Taylor, President of the American, written to the Comptroller of Currency on August 5th, 1914, page 136 of the Master's Report, in which he stated:

299 "The directors of this association made a careful examination of the Commercial National, and were fully convinced that the assets were amply sufficient to pay all the liabilities, though the stock may be somewhat impaired."

## VI.

That the Master stated and certified in his said Report, under subdivision 5, page 21, that

"The Commercial National Bank had large deposits and a valuable patronage. In case it was necessary for it to liquidate and go out of business, Mr. Taylor was interested in having these deposits and this patronage, as far as possible, 'absorbed' by the American National Bank."

In so finding the Master erred:

(1) Because such finding is contrary to the evidence in that it limits the scope of the evidence on this particular point, and is not a true finding as to the correct position of Mr. Taylor in desiring to obtain the business and patronage of the Commercial.

The Master should have found that Mr. Taylor was anxious to take over the business and patronage of the Commercial by absorbing that bank with the American, or by effecting a consolidation of the two banks through a purchase of the assets of the Commercial.

See the evidence quoted under Exceptions II and III herein.

VII.

That the Master stated and certified on page 23, of his said Report, that

"E. N. Lewis, Cashier of the Commercial National Bank, under date of August 3, 1914, wrote to the Comptroller as follows:

In so finding the Master erred:

(1) Because there is no evidence which will support a finding that E. N. Lewis was Cashier of the Commercial National Bank on August 3, 1914.

300 (2) Because said finding is contrary to the evidence.

In this connection defendants take occasion to make the distinct exception that the evidence no where justifies the Master in finding and stating that the "officers" or "employees" of the Commercial still acted as such after August 1, 1914, and this exception is here placed in the interest of brevity and for the convenience of the Judge. No witness for the plaintiff states that such was the case, and the only fact from which the Master draws such a conclusion is that the same persons acted at the American building in some capacity similar to that which occupied them in the Commercial building, under the direction, however, of the officers of the American, and without any authority from any officer, director, or finance committee of the Commercial.

In this connection see the testimony of Mr. Anderson found on page 126 of the Master's report, and on page

108, Section 4, record evidence, beginning: "I told Mr. Taylor, etc.," which was no where denied by Mr. Taylor, but rather ratified by him.

See Report, page 127.

See also testimony of Mr. Dure, page 126 Master's Report on pages 66 and 67, Section 4; and also testimony of DeBorde on page 127, Section 4, pages 147, 149, 167; also testimony of E. Y. Mallary, Sr., in Book 4, page 16: "That Lewis was not authorized or expected to do anything more than to transfer all these assets and to transfer balances, etc."

Testimony of Mr. Souder, Book 3, page 1, and also testimony of Mr. DeBorde in Section 4, page 144, to the effect, that

The Commercial ceased the banking business August 1, 1914, and that he went to work with the American on August 3rd, and that there were no new accounts after August 1st.

301 See also the testimony of Mr. L. O. Benton, in Record, Section 5, page 1, to the effect that,

Mr. Taylor told him on August 7, 1914, that no shares could be transferred because the Commercial was out of business, and

his testimony on page 4, of Record 5, that

Officers of American advised him the Commercial had no books at American building, that the books belonged to the American.

Reference is also made to the evidence cited and referred to in Exception X and XX hereof.

VIII.

That the Master stated and certified, under subdivision 8-(a), on page 27,

"During banking hours on August 1, 1914, the Commercial National Bank conducted its banking business, as formerly, at its banking house known as the Commercial National Bank building at the corner of Cotton Avenue and Second Street, Macon, Georgia..... At the close of business on that day the Commercial National Bank ceased to do a banking business in said building."

In so finding the Master erred, in that he failed to find that at the close of business on that date the Commercial ceased to do a banking business in said building or in any other place; and, that accordingly, the said finding fails to set out the entire truth of the situation, and to that extent is error.

The evidence in support of this exception will be more particularly set out in full in subsequent exceptions to the Master's said report to which reference is here made, to-wit: Exceptions X and XX.

IX.

That the Master stated and certified at page 28, of his said report, as follows:

"At the beginning of banking hours on August 3rd, the persons named above as officers and em-
302 ployees of the Commercial National Bank, with the exception of E. Y. Mallary and J. J. Cobb,

commenced their work in the space so set apart to them in the American's banking room, and assumed immediate custody of cash, receivables, books and records which they, as officers and employees of the Commercial, had formerly had custody, etc....."

In so finding the Master erred:

(1) Because there is no evidence to support a finding that the persons named and referred to on and after August 5, 1914, acted as officers or employees of the Commercial, or that they assumed immediate custody of the cash, receivables, books and records which had formerly been used by the Commercial.

(2) Because said finding is contrary to the evidence.

Said finding is harmful and prejudicial to the contentions of the defendants.

In support of exception here made, defendants refer to the overwhelming evidence which shows that on and after August 3rd, the affairs of the Commercial National Bank as related to what had previously been its banking business, and as related to its cash, receivables, books and records, and the custody of the same, and as related to all matters, save those which are purely corporate in character with which the officers and board of directors of the Commercial, under the provisions of the contract, were to continue their relation, were absolutely under the dominion, power and direction of the officers of the American National Bank to which all the assets of the Commercial were transferred on August 1, 1914, and which began vigorously on August 3rd to administer or liquidate the affairs of the Commercial.

Specific reference is here made to the evidence which has been set forth and cited in Exceptions X and XX and VII.

303 X.

That the Master stated and certified under subdivision 9-(a), on page 29, of his said report, that

"The case and cash items amounting to $30,668.78, and the receivables of the Commercial carried down to the American's building on the morning of August 3rd, were not turned over to the officials of the American, or incorporated with the cash and receivables of the American, but retained in the custody of the Commercial's officers and employees who were occupying the space in the American banking room set apart for the use of the Commercial's officers and employees, heretofore named. The Commercial's employees continued to have custody of the cash and cash items of the Commercial until August 25th. .....The receivables continued to be kept in the Commercial's pouch in the custody aforesaid until paid, or otherwise disposed of, except as they were taken out temporarily by L. P. Hillyer, Hansell Hillyer, or Karsten, for collection."

In so finding the Master erred, which error is harmful to defendants,

(1) Because there is no evidence to support such finding.

(2) Because such finding is contrary to the evidence.

The Master should have found that, the cash and cash items of the Commercial, though already transferred to the American, and then in the custody and control of the officers of the American, were not incorporated with the cash and receivables of the American; but were kept separate for the convenience of the American, and were handled in part by former employees of the Commercial acting under the direction and command of the officers of the American.

In this connection see the evidence hereinbefore quoted under Exception IV; also paragraph 1 of the contract.

As shown on page 63, of Section 1, Mr. Taylor stated to the stockholders' committee of the Commercial on August 26, 1914, that

He had requested Mr. Hillyer to take particular charge of the Commercial's affairs, and further stated that
Mr. Hiller would call together a joint meeting of the American's committee and the Commercial's committee as to the course to be pursued in connection with the claims that he may not be able to satisfactorily handle.

304

On page 203, Part 1, of the Record, Mr. Creed Taylor testifies:

"That expense vouchers which plaintiff claimed were paid by the Commercial National Bank were O. K'd. by the officers of the American.

On page 209, this same witness showed the reasonableness of Mr. Taylor having taken the former Commercial's employees to engage in the work of administration of the Commercial's affairs.

Mr. R. G. Souder, on page 21, Section 3, also testifies:

That expense accounts were O. K'd. by some officer of the American.

See also, in this connection, pages 22, 23 and 24, of Section 3.

Mr. Scott, Cashier of the American, testifies to the same thing on pages 49 and 50 of Section 3.

See also the Advertisements inserted by Mr. Taylor in the Macon papers, in The Telegraph of August 2, 1914, and in The News on August 3, 1914, which appear at page 70, Part 3.

On page 8, Section 4, Mr. Mallary testified:

"That he went to the American Bank on Monday, the 3rd, at the request of Mr. Taylor."

The work that Mr. Mallary did there is shown on pages 9 and 11.

Mr. Mallary testifies, on page 12, that

"He had nothing whatever to do with the manner in which the record was kept, or the handling of the money, or any part of the business conducted by the American.

On page 13, he testifies, that

"He had no supervision or authority over anything that was done by the former employees of the Commer-

cial; but that such supervision was done by Mr. L. P. Hillyer, without consultation with Mr. Mal-
305 lary.

He testified that neither he, nor Mr. Cobb, had any supervision whatever of Mr. E. N. Lewis, or Mr. Souder.

On page 30, Section 4, Mr. Mallary stated definitely and clearly, that

The general direction and conduct of the affairs of the Commercial were directed by Mr. Taylor, and that the manipulation of the books and methods were dictated by Mr. Hillyer.

See also Mr. Mallary's testimony on page 36, of Section 4, showing the control by the American of the administration of the Commercial's assets after August 3, 1914.

On page 6, Section 4, Mr. Dure testified:

"That as far as he knew, no officers of the Commercial, nor Board of Directors undertook to exercise any control over the work of E. N. Lewis after August 3, 1914."

On page 68, Section 4, Mr. Dure testified:

"That Mr. L. P. Hillyer had charge of the collection of the Commercial's paper, and that the actual work was done by Hansell Hillyer.

Also, on pages 68 and 69, Mr. Dure testified, that

"The Commercial's shareholders' committee acted only in an advisory way, did nothing on their own initiative, dealing only with such matters as were submitted by Mr. Hillyer and Mr. Taylor."

On page 107, Section 4, Mr. W. T. Anderson, explained,

That Mr. Taylor employed the clerical forces which had previously been employed by the Commercial, at his (Anderson's) request.

On pages 108, Mr. Anderson corroborates the testimony of Mr. Dure as to the capacity in which the Commercial's stockholders' committee acted.

Mr. Anderson testified on page 110, that

Mr. Lewis and others who had been connected with the Commercial did not after August 3rd, perform any function, except as a part of administration under the direction of the officers of the American.

306 At the bottom of page 113, and top of page 114, Mr. Anderson testified, that

Mr. Taylor designated Mr. Hillyer as the Manager of the administration of the Commercial's affairs.

Mr. Mallary testified on page 132, Section 4, that

Mr. Hillyer, the Vice-President of the American, discharged E. N. Lewis from his connection with administration of liquidation of the affairs of the Commercial.

On page 144, Section 4, Mr. DeBorde testified:

That Mr. Taylor, Mr. Scott and Mr. Lewis were in the administration offices practically all the time.

On page 178, he testified, that on and after August 3, 1914, Mr. E. N. Lewis was two-thirds of his time in conference with Mr. Hillyer and Mr. Taylor.

At the bottom of page 2, and the top of page 3, Section 5, Mr. L. O. Benton testifies, that

He stated to Mr. R. J. Taylor that, inasmuch as the Commercial Bank was closed up, the, Benton, preferred that no one who had been previously employed by the Commercial be retained to handle the paper, and that Mr. Taylor assured him that he, Taylor, had charge of the matter, and that the assets would be handled in the proper way; but that it was impossible for him to get along without assistance from the forces of the Commercial.

On the bottom of page 4, Section 5, Mr. Hillyer shows, that as soon as he returned to Macon, a few days after August 3, 1914, he "immediately went back there to look after the affairs of the Commercial."

Mr. Hillyer shows on page 41, that he and Mr. Taylor employed and discharged E. N. Lewis, and the other former employees of the Commercial, and states in unqualified words that he had charge of this force.

At page 53, he testifies that when he returned to Macon, Wednesday night following August 1st, and went to the bank on Thursday, Mr. R. J. Taylor turned over to him the management of the administration of

the Commercial's affairs, saying that he, Tay-
307 lor, had more than he could attend to.

Mr. P. D. Karsten shows on page 76, Section 5, that he was employed by the American National Bank on or about August 1, 1914, and that he was employed specifically to wind up the affairs of the Commercial, and on page 83, he testifies that he received his instructions from R. J. Taylor, as to the affairs of the Commercial.

On page 20 of the transcript of Mr. Taylor's testimony Mr. Taylor states, in answer to a question as to who handled the accounts between the two banks; who gave direction about these things, that "Mr. Scott and Mr. Hillyer, and especially Mr. Hillyer. I, myself, asked that Mr. Hillyer take charge of that branch of the business."

See page 46 of the same transcript, Mr. Taylor testifies, that

Mr. Mallary's presence at the American on Monday morning was at his (Taylor's) suggestion and request.

At page 57 of the same transcript, Mr. Taylor testifies that for

"Sometime after the American took over the business of the Commercial beginning August 3, 1914, the American had two or three of the Commercial's clerks in connection with the liquidation or administration."

Asked whether the Commercial's papers were kept separate, he answered:

"Yes, sir, as far as I recall; that was a matter of retail with Mr. Hillyer, I mean with the others."

Reference is also made to the evidence cited and referred to in Exceptions XX and VII.

XI.

Defendants except to divers findings of the Master, which though closely related each to the other, and being practically identical as to ultimate effect, are to be found in different portions of the Master's
308 Report. Defendants, for the convenience and economy of the Court's time, as well as for the convenience of these defendants, here make one exception to these various findings.

The findings referred to are as follows:

(1) On page 29, of his report, the Master found that the cash and cash items, amounting to $30,668.78, and the receivables of the Commercial carried down to the American's building on the morning of August 3rd, were not turned over to the officials of the American, or incorporated with the cash and receivables of the American "but retained in the custody of the Commercial's officers and employees.'

(2) On page 29, of his said report, that the records next above described were retained in the custody of the Commercial's officers and employees "who were occupying the space in the American's banking room set apart for the use of the Commercial's officers and employees, here to be named."

(3) On page 29, of his said report, the Master found that

"The Commercial's employees continued to have custody of the cash and cash items of Commercial until August 25th, after which time the Commercial had no actual cash;"

and the Master further found that the receivables continued to be kept in the Commercial's pouch, in the custody aforesaid, until paid or otherwise disposed of, except as they were taken out temporarily by L. P. Hillyer, Hansell Hillyer, or Karsten, for collection.

(4) On page 29, of his said report, the Master found that the books which were in use by the Commercial at the time of the removal of the assets to the American Bank building continued to be used after the removal, and entries in the books continued to be made in the same way by the employees of the Commercial, until Karsten succeeded DeBorde in January, 1915.

309 (5) At page 29 of his report the Master found that the Commercial's books upon which deposits were registered on, and prior to August 1, 1914, were brought on August 3, 1914, to the American's building, and were continued in use, entries of deposits and withdrawals being made on them by "Commercial's employees."

(6) At page 30 of his report the Master found that a part of the American's banking room was on and after August 3rd, used by the Commercial.

(7) The Master found at page 30 of his report, that a depositor of the Commercial coming to the banking house of the American and to that part which the evidence shows was set aside for the administration of the

affairs of the Commercial, "was requested by the paying teller of the Commercial to leave his pass book so that his account could be verified."

(8) At page 30 of his report the Master found that if one who had been a depositor of the Commercial drew his check, on and after August 3, 1914, for a small amount, and the Commercial had the cash on hand, the check was cashed at the Commercial's paying teller's window; but if the check was for a large sum or the Commercial did not have the cash with which to pay it, the check of the depositor was O.K'd by E. N. Lewis, or a teller of the Commercial; the Master further found that this was the usual way of withdrawing deposits from the Commercial, but sometimes a check in favor of the depositor, or his balance was drawn on the American National Bank by Lewis, Cashier of the Commercial, and this check given to the depositor.

(9) At page 30 of his report the Master found that when a depositor checks out his balance with the Commercial, he was requested by some "employee of the Commercial" to deposit the amount with the American.

310 (10) At page 30 of his report the Master found that in casting up the day's amounts paid out by the American in discharging the liabilities of the Commercial, the American would furnish to the Commercial all checks drawn by depositors of the Commercial and paid by the American, together with a list thereof, giving total amount; and the Master thereupon found that such list of checks were "verified by the Commercial's employees" and a check was drawn on the American for the total amount, "by the Commercial, signed by Lewis, Souder, or a Commercial teller."

(11) At page 31 of his report the Master found that "DeBorde acted as receiving teller" in receiving deposits, which the Master found were made with the Commercial, "and at night turned over the deposits received to the paying teller of the Commercial."

(12) At page 31 of his report the Master found, "at the close of business on August 7th "the receiving teller's book of the Commercial" was closed, the work of that teller consolidated with that of the "paying teller of the Commercial."

(13) At page 31 of his report the Master found that, under date of November 16, 1914, and December 15, 1914, the deposits remaining on the books of the Commercial, in small and inactive accounts, were transferred to the American by checks drawn in favor of that bank, and signed by Lewis, Cashier, and DeBorde, Teller, and the amount credited to the Commercial.

In addition to the evidence cited and referred to generally in support of the exceptions here made to other kindred and related findings, defendants here make reference to the fact as found by the Master and as clearly indicated by the record that on and after September 30, 1914, the American National Bank was not only in charge of the actual liquidation of the Commercial, but was the formally elected and qualified liquidating agent, and reference is further made to the fact that E. N. Lewis was on November 16, 1914, and December 15, 1914, not only not the Cashier of the Com-
311 mercial National Bank as related to the handling of the assets at the American's building, but he was not even employed by the American in connection with the liquidation; the Master having found

at bottom of page 28 that E. N. Lewis left this work October 31, 1914. In the evidence of L. P. Hillyer, Section .... page ...., and E. Y. Mallary, Section ...., page ...., shows that Lewis had been discharged by L. P. Hillyer, Vice-President of the American.

(14) At page 32 of his report the Master found that on and after August 3, 1914, and until January 1, 1915, the Register of Loans and Discounts of the Commercial "was kept by the Commercial's employees."

In addition to the evidence herein referred to, in support of this entire exceptions, defendants call the attention of the Court to the fact as reported by the Master and as shown by the contract and by the resolutions of the shareholders of the Commercial of September 30, 1914, that on and after September 30, 1914, the American was the formally elected and qualified liquidating agent of the Commercial's assets and affairs.

(15) At page 32 of his report the Master found that

"A great deal of the work done by the employees of the Commercial, cited by Mr. L. P. Hillyer, Hansell Hillyer and P. D. Karsten of the American, was in connection with the collection of the loans and discounts of the Commercial."

(16) At page 32 of his report the Master found that as the notes payable to the Commercial were paid an entry to that effect was stamped on the loan register; and that "all notes were held by the Commercial until paid in some way, and until paid remained open on the books of the Commercial."

(17) At page 34 of his report the Master found that the mail teller of the Commercial had on August 3rd remittance letters of $42,580.27 for collection, and credited to the accounts of other banks; and that of these checks amounting to $32,100.00 were mailed
312 out by the Commercial's employees all over Georgia for collection as cash items.

(18) At page 35 of his report the Master found that the paying teller's cash book was continued after the removal to the American, and until September 30, 1915; and that after close of business on August 7th, the books kept by the receiving teller, collection teller, and mail teller, were closed, and their business consolidated with that of the paying teller and entered on his books.

(19) At page 36 of his report the Master found that in the Miscellaneous Check Book which had been used by the Commercial there were twelve (12) checks drawn by the Commercial from August 3rd to August 13th, 1914.

(20) At page 36 of his report the Master found that checks for the payment of the expense of liquidation or administration, such as "salaries of the Commercial's employees, Lewis, Cashier, Souder, Assistant Cashier, as well as for ice, etc.," were paid by checks drawn on the Commercial.

(21) At page 36 the Master found that a statement book was kept by the Commercial from day to day until September 30, 1915.

(22) At page 37 the Master found that statements of the account between the American and Commercial

were furnished by the American "to DeBorde of the Commercial," and that these statements were verified by "the Commercial's employees."

(23) At page 39 of his report the Master found that on and after August 3, 1914, three hundred and sixty-five (365) checks were drawn by the Commercial on the American, and that "the first check is signed by E. Y. Mallary, President, and others signed by E. N. Lewis, Cashier, R. C. Souder, Assistant Cashier, and some by E. N. Lewis, Cashier and J. M. DeBorde, Teller;" and the Master further found, as reported on page 39, that these checks after being paid to
313 the American were returned as cancelled checks "to the Commercial's forces".

(30) At page 39 of his report the Master found that the keys of the Commercial Bank building were from August 3, 1914, to January, 1915, kept by "Commercial's officers and employees, and that Commercial's officers and employees were during said period in charge of the inactive books and old correspondence which continued to be kept at the Commercial's building."

(31) At page 41 of his report the Master found that checks drawn on the Commercial, and O.K'd by an officer of the American paid for the services of "Lewis, Souder and employees of the Commercial," during a period following August 3, 1914.

(32) At page 41 of his report the Master found that as the services of the employees of the Commercial were no longer needed Hillyer let them go.

(33) At page 41 of his report, the Master found that the employees of the Commercial were not em-

ployed as such by the American; that they were already the employees of the Commercial, and their services were not dispensed with until after such employees were no longer needed in connection with the business of the Commercial.

(34) At page 44 of his report, the Master found that a duplicate of a statement of the transaction between the American and Commercial were turned over to "the Commercial monthly, usually to DeBorde."

In support of the exceptions herein made, defendants refer to the evidence cited and referred to under Exception VII, and X, and XX and LXXXVI.

## XII.

At page 31 of his report, the Master found:

314 "The Commercial accepted deposits from its customers when they were not ready to transfer their accounts or wished to make deposits to meet outstanding checks, but no deposit accounts were opened with new customers."

In this finding the Master erred, in that the finding is not sufficiently full in accordance with the requirements of the evidence and so as to do justice to these defendants.

The Master should have found, as is clearly indicated by the evidence hereinafter cited, that the receiving of deposits by the Commercial was for one of three purposes:

(a) To establish an item of credit for a depositor who had drawn a check without knowing that the Commercial had retired from business, and without having a sufficient balance to his credit to honor said check.

(b) Where depositors were overdrawn on August 1-3, 1914, and

(c) Instances where a depositor of the Commercial was not prepared to transfer his account to the American, in which instances deposits were received at the request and instance of R. J. Taylor, President of the American, to enable the American the better to take over the business of the Commercial.

The following references to the evidence are made:

On page 201, Section 1, Mr. Taylor testified:

"That it was difficult to change the depositors from one bank to another, that depositors are timid in dealing with new people, preferring to deal with people with whom they have dealt, that it would not be an unnatural thing for the American to have taken the officers of the Commercial to receive deposits from the Commercial for customers, nor would it have been unnatural to have utilized the former Commercial employees for the paying of checks, even if the assets had been sold to the American, and even if the American had an obligation of paying the overplus to the Commercial shareholders."

At page 12, Section 3, Mr. Souder testified:

The method of dealing with parties and checks on and after August 3, 1914, was not in accordance

314 with the usual and customary way of conducting a banking business."

At page 27, Section 3, Mr. Souder further testified:

The circumstances under which deposits were taken and answers that, during the time such deposits were taken from people who were uncertain about their account, or had checks out, they were trying to close out the matter as fast as possible, and get the depositors to keep their funds in the American.

At page 28, he testified, that the depositors were discouraged as much as possible.

At page 70, Section 3, is shown the Advertisements inserted by Mr. Taylor in the Macon papers, in The Telegraph on August 2, 1914, and in The News on August 3, 1914. This was an announcement to the world including the shareholders of the Commercial. This announcement was in thorough accord with the resolution of the Directors of the Commercial of August 1, 1914, and with the notice sent to the Commercial shareholders.

The Advertisement announces:

"We are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National Bank of this city has been effected. The assets of the Commercial National Bank have been taken over and we will take care of all the business formerly handled by the Commercial National."

The Advertisement deals with the deposits as having been transferred; the evidence showing that there was

a period of humoring depositors in order to guard against their taking their accounts elsewhere.

The Advertisement shows that the money of the Commercial had been transferred to the American.

The Advertisement distinctly requested that checks should be written on the blanks of the Commercial until the accounts had been formally transferred.

At page 90, Section 4, Mr. Dure explained the probable and reasonable delay in taking over deposits of the Commercial.

At pages 146 and 146, Section 4, Mr. De-
315 Borde, explained what deposits were taken and why they were taken.

At bottom of page 147 he testified that no new accounts were put on the books after August 1, 1914.

At page 156, Section 4, Mr. DeBorde again testified about taking deposits. He did so again at bottom of page 156.

XIII.

That the Master stated and certified under subdivision J, on page 36 of his said report, that

"This book (Statement book) shows the condition of the bank at the close of each day's business. Such a book was kept by the Commercial, and was continued to be kept from day to day until September 30, 1915. In this book under the head "Due to other National Banks" was placed the total of the sums due other National banks, according to the books of the Commercial, and included in such daily total was the amount which the accounts of the American on the general ledger of the Commercial indicated that the Commercial was due to the American."

In so finding the Master erred:

(1) Because, said finding is contrary to the evidence.

(2) Because, there is no evidence to support such finding.

The Master should have found that, under the direction of the officers of the American former employees of the Commercial continued to keep the Statement book until September 30, 1915, and that this book was kept for the convenience of the American in ascertaining from day to day the amount of the purchase price over and above the amount of assets realized on by liquidation.

For evidence supporting this exception, see evidence heretofore cited under Exceptions VII and X. And also, evidence which will be hereafter cited and fully set out under subsequent Exceptions XX and LXXVI.

316 XIV.

That the Master stated and certified, in effect, under K, on page 37 of his said report, that

Monthly statements were furnished by the American National Bank to the Commercial, and that drafts or checks of the Commercial paid by the American were returned with the statements, which were verified by the Commercial employees.

In so finding, the Master erred, because such finding is contrary to the evidence.

The Master should have found that these monthly statements were rendered at the direction of the officers of the American and for their convenience in handling the administration of the Commercial's affairs.

For evidence supporting this exception see evidence cited under Exception VII and X, and under exceptions hereinafter cited Nos. XX and LXXXVI.

XV.

That the Master stated and certified, in effect, under subdivision N, on page 39 of his said report, that

Beginning August 3, 1914, the Commercial National Bank drew its checks on the American National Bank from time to time. These checks after being presented to and paid by the Amreican National Bank were returned as cancelled checks to the Commercial's force. The American on its books charged the checks to the Commercial's account.

In so finding the Master erred, because such finding is contrary to the evidence, and that he failed to explain, or supplement such finding by stating and further finding, as he should have done, that in the winding up of the affairs of the Commercial as a convenience of administration, checks were drawn by the Commercial on the American, and that under the direction of the officers of the American those checks
317 were signed by former employees and officers of the Commercial, and after being presented to and paid by the American were returned as cancelled checks to the Commercial's former employees, who were at that time administering its affairs in accordance with the instruction and orders of the American.

For evidence supporting this exception, see evidence cited under Exception III, and Exception X, and evidence hereinafter to be cited under Exception XX and LXXXVI.

318 XVI.

That the Master stated and certified under Subdivision O of his said Report, on p. 39, that:

"After the removal to the American National Bank E. N. Lewis had charge of the general correspondence of the Commercial National Bank, conducting its correspondence with other banks relative to withdrawal of balances and substitution of collateral, with customers in regard to collection of loans, with the Comptroller of Currency, and with stockholders. Between the 3rd and 15th of August, R. C. Souder, conducted some of the correspondence. The corerspondence and certain of the records at the close of the day's business were carried to the Commercial's building and filed away as formerly. The inactive books and old correspondence continued to be kept at the Commercial's building, the keys to which remained in the custody of the Commercial's officers and employees until turned over to Karsten in January, 1915."

In so finding the Master erred:

(1) Because, there is no evidence to sustain such finding, and

(2) Because, such finding is contrary to the evidence.

The Master should have found that E. N. Lewis, under the direction of the officers of the American, attended to the correspondence necessary in the administration of the Commercial's affairs, and that important letters were dictated by officers of the American or its counsel.....That the inactive books and old correspondence continued to be kept at the building formerly occupied by the Commercial, the keys to which remained in the immediate custody of former officers of the Commercial then engaged in the administration of the Commercial's affairs under direction of the American. This arrangement was for the convenience of the American in accordance with the plan of administration adopted.

319 For evidence supporting this exception, see evidenec cited under Exception X and Exception XX, and VII, and also see evidence hereinafter to be cited No. LXXXVI. See also the testimony of L. O. Benton on page 4, Section 5, of the Record, that the books formerly belonging to the Commercial now belonged to the American, and that the Commercial at that time had no books.

## XVII.

That the Master stated, certified and found in his Report, at page 32 thereof, that "a great deal of the work done by the employees of the Commercial, assisted by Mr. L. P. Hillyer, Hansel Hillyer and P. D. Karsten, of the American, was in connection with the collection of these loans and discounts", the reference being to loans and discounts shown on the register of the Commercial on August 1-3, 1914.

In so finding, the Master erred, said error being prejudicial and harmful to these defendants.

(1) Because said finding has no evidence to support it.

(2) Because said finding is contrary to the evidence in the case.

The Master should have found from and after August 3, 1914, the entire charge and control of the realization upon the loans and discounts of the Commercial was in the officers of the American National Bank, Mr. R. J. Taylor, President of the American, having direct and immediate charge until on or about August 5th or 6th, 1914, and Mr. L. P. Hillyer, Vice-President of the American, having taken charge immediately upon his return from New York, on or about August 5-6, 1914.

320 And the Master should have found, as demanded by the evidence, that the entire work and service performed by the men who had previously been in the employment of the Commercial in connection with the realization upon assets of the Commercial, was under the direction and control of the officers of the American.

In this connection, reference is made to the testimony of DeBorde, Sec. 4, page 144, 178; the testimony of L. P. Hillyer, Sec. 5, page 4, 41, 53; the testimony of R. J. Taylor, Sec. 8, page 20, 46, 57; the testimony of W. T. Anderson, Sec. 4, page 107, 108, 110, 113, 114; the testimony of L. S. Dure, Sec. 4, page 66-68-69; the testimony of E. Y. Mallary, Sec. 4, page 8, 12, 13, 30.

XVIII.

That the Master on page 24 of his Report, after reciting that the mail teller of the Commercial had on

August 3rd remittance letters for $42,580.27, containing items for collection and for credit to accounts for other banks, found that "Of these, checks amounting to $32,100 were mailed out by the Commercial's employees all over Georgia for collection as cash items.

In making this finding, the Master erred, the error being harmful and prejudicial to the defendants.

The error of the Master consisted in the fact that his finding is not a fair and full statement of the fact. The Master's finding that this work was done by the Commercial's employees is excepted to in another portion of these exceptions. Defendants here contend that the Master should have stated, as is clearly shown by the evidence, that the items referred to related to transactions which antedated August 3rd in their inception, and which were in transit at the time the Commercial Bank was taken over by the American; and
321 for that reason were handled in the way indicated by the record. See the evidence of R. C. Souder, Sec. 3, Page 29.

XIX.

That the Master stated and certified in his said Report under subdivision P, on page 40, that

"For about two weeks beginning with August 3, the business conducted by the Commercial in winding up its affairs was very active."

In so finding the Master erred, because such finding is contrary to the evidence.

The Master should have found that for about two weeks, beginning with August 3rd, the business of con-

ducting the administration of the Commercial's affairs by the American was very active.

For evidence sustaining this exception, see evidence herein cited in Exception XX.

XX.

That the Master stated and certified under subdivision Q, on page 40, of his said report, that

"The business of the Commercial while conducted at the Americans' building in the usual and customary way in which it had been conducted at the Commercial's building, the business being limited to that of a bank winding up its affairs preparatory to going out of business entirely, was under the supervision of officers of the American National Bank.

While in active business at the Commercial's building, 'the keeping of accounts and detail of handling the business was under the direction principally of Mr. Lewis, and under the general control of Mr. Cobb,' the active vice-president.

Hillyer, vice-president of the American, and other officers of that bank did not assume to act as officers of the Commercial National Bank.

Lewis was not an officer of the American, and did not assume to act as such.

The checks by which Lewis, Souder and employees of the Commercial were paid for their services, were drawn on the Commercial, but the checks were O.K'd. by an officer of the American.

As the services of the employees of the Commercial were no longer needed. Hillyer would "let them go."

322 The employees of the Commercial were not employed as such by the American, and had no connection with the business being conducted under the name of the American National Bank. They were already the employees of the Commercial and their services were not dispensed with until after such employees were no longer needed in connection with the business of the Commercial.

The finance committee of the Commercial did not function after August 1st, but it does not appear that the character of the business transacted required the action of a finance committee.

After August 12th, when the American was first appointed liquidating agent of the Commercial all matters relating to extensions, settlements, etc., and all matters where the American could not realize the face value of paper, were taken up and acted upon by a committee from the directors of the American, and the shareholders Committee from the Commercial, composing a "joint committee."

After August 12th, when it was necessary to collect loans through legal proceedings, such collections were made through the attorneys of the American National Bank.

Anwers to letters of certain stockholders asking Lewis, cashier, to transfer certificates of stock, were dictated by attorneys for the American National Bank. This was also after the 12th of August."

In so finding the Master erred:

(1) Because there is no evidence to support such finding, and

(2) Because such finding is contrary to the evidence.

The Master should have found and certified that the Commercial did not conduct at the American's building any business in the usual and customary way in which it had been conducted at the Commercial's building, but that what was done at the American building was by some of the former employees of the Commercial under the direction and for the convenience of the officers of the American who had taken charge of the assets and business of the Commercial, and who directed the former employees of the Commercial what to do, and in what manner to do what was done. That after
323 August 1st, the officers of the Commercial ceased to function as such officers and its former employees were no longer under the control of its officers, but were employed by the American, and no former employee or officer of the Commercial had any power or authority to do any act so to bind the Commercial or to transact any business for the Commercial.

That not only were such former officers or employees under the supervision of the officers of the American, but were the employees of the American, and in all their actions were directed by the American's officers.

While it is true that Hillyer, Vice-President of the American, and other officers of that bank, did not assume to act as officers of the Commercial; the Master should have found that Hillyer, by direction of Mr. Taylor, the President of the American, was put in charge of supervising and directing all the work being done by such employees, and at no time after August 1st, were such employees under the direction or control of any officer of the Commercial, nor was any effort made by such officers to direct or control such former employees.

And while it is true that Lewis was not an officer of the American, the Master should have found that

Lewis did not represent as an officer the Commercial, and as such had no authority to bind the Commercial after the Commercial went out of business on August 1st, and that he was not authorized to do any act as Cashier, except transfer all the assets and balances so as to facilitate the American in carrying out its contract of purchase.

And while it is true, as the Master finds,
324 that the checks by which Lewis, Souder and the other former emplayees were paid for their services while at work at the American, were drawn on the Commercial, but O. K'd. by an officer of the American, yet he should also have found that this method of payment was one adopted by the American's officials and carried out for their convenience; and that none of the directors of the Commercial nor its finance committee knew such an arrangement were being carried out, and did not agree to it or sanction it, but it was done entirely by direction of the American.

The Master should have found that these former employees of the Commercial who were engaged at work in the American were no longer the employees of the Commercial, but of the American; and while they may not have had any connection with the business conducted under the name of the American, they were in fact absolutely under the direction and control of the American, and performed the services they rendered for it, and not for the Commercial.

See Exhibit to original bill, page 4.

By Section one of the contract is indicated the Memorial of the absolute transfer by the Commercial to the American of every vestige of property owned by the Commercial National Bank. This transfer was of assets

including cash and cash items on hand at the close of business on August 1st, 1914, as stated in the contract.

How can it be possible that the Commercial can be claimed to have handled as a bank its cash and cash items after August 1st, 1914, when by the very terms of the contract itself there was an absolute transfer of all their assets "at the close of business on August 1st, 1914?"

Sec. 1, Page 8.

The Minutes of the meeting of Aug. 12, 1914, are shown in the minute book which though a corporate document purely was taken in charge by the American National Bank on Aug. 3, 1914, and kept by that bank until the time of trial. This is shown by the testimony of Souder on Page 12, part one.

These minutes appear on pages 23 and 13
325 of part one..

The meeting was held in pursuance of call issued Aug. 1, 1914 the call which had previously been referred to.

Mr. E. Y. Mallary, who seemed to have been the watchful officer of the Commercial Bank, attended the meeting of Aug. 12, 1914, had noted in the contract the reference to stockholders' liability and protested vigorously against the same.

It is understood that the resolution for liquidation offered by Mr. Lane (Page 21) did not call any reference to a relationship of creditor and debtor between the American National Bank and Commercial National Bank. We do not know who prepared this liquidation resolution, nor do we know who prepared the liquidation resolution of September 30, 1914. The defendants have no means of knowing. Mr. A. W. Lane is dead. The

writer has not a doubt that if Mr. E. Y. Mallary, the man who made this transaction for the Commercial National Bank had attended the stockholders' meeting on September 30 1914, the reference to indebtedness would not have remained therein.

It is to be noted as shown on page 17, that the contract of August 11, 1914, which was ratified by the stockholders of the Commercial, was by them ratified only on the theory that it was a contract made by the president of the bank "pursuant to the resolution of the Board of Directors aforesaid", meaning the resolution of the Board of Directors of the Commercial National Bank of August 1, 1914, which resolution provided only for liquidation and consolidation.

Sec. 1, page 49.

The resolution of the American directors August 7, 1914, recites that the Commercial National Bank had previously to that date been absorbed—"absorbed by the American National Bank." (Page 49).

Sec. 1, page 51.

These bonds were purchased on August 1, 1914, or as of that date, as shown on page 51, and the figures at which the bonds were then was to be evidenced by the market price in the New York report on August 1, 1914.

Sec. 1, page 202.

Mr. Taylor testified further: This witness further testified that a bank with a capital of $300,000.00 would make new loans every day, issue certificates of deposit

every day, receive deposits from other banks every day, would make collections every day.

326 Sec. 3, page 1.

R. C. Souder testified that between August 1st and 3rd, 1914, the whole assets of the Commercial were changed—the whole bank was changed from the Commercial National to the American.

Sec. 3, page 12.

As shown by page 12, Souder was asked why the Commercial did not make any new loans or make collections, he having testified that the bank did not make new loans or collections only after August 3rd, the witness stated that the reason that neither loans nor collections were made, was because the bank began liquidation on August 3, 1914.

Sec. 3, page 19.

R. C. Souder. Witness Souder testified at page 19 that the moneys collected on bills receivable of the Commercial were deposited in the American, a plan which was not the usual and customary way of doing banking business.

This witness testified at page 19, that as soon after August 3rd, as reconciliation could be made, balances in foreign banks were checked out in favor of the American and that these accounts were closed out as soon as possible.

He testified at page 20, that this plan was not the usual plan of doing business. He further testified that the accounts were actually closed out as soon as possible.

Sec. 3, page 21.

Souder: This witness at page 21, as well as at numerous places in his testimony showed that the expense account for the administration of the Commercial affairs, which plaintiff contends were paid by the Commercial Bank as a going bank, required and received the O. K. of some officer of the American Bank, sometimes that of L. P. Hillyer, sometimes that of Mr. Bozeman, and sometimes that of Mr. Scott. Other instances of this O. K. are shown on pages 22, 23, 24. On page 24, it is shown that the first salary voucher due, received the O. K. of Mr. Hillyer. The witness testified that it was not customary for a bank doing usual business to have its salary vouchers O. K'd. by another bank; that he had never heard of such a thing.

Sec. 3, page 41.

E. C. Scott. At page 41, of part three as exhibited to Cashier Scott, the letter he wrote under date of August 1, 1914, Mr. Scott was very reluctant about admitting the authorship of that letter. He finally testified on page 42 that the sending of the letter was done with the authority of the head officer of the American. At the top of page 43, he testified that both Mr. Taylor and Mr. Hillyer knew of it.

At page 44, he testified that the form of letter
327 that was actually sent out was deliberately and advisedly prepared after a conference with the officers of the American; that these officers considered the contents before sending the letter. The text of the letter is shown in page 43.

Sec. 3, page 46.

Mr. Scott admitted that when he wrote this letter he took into the resources of the American a part of

the assets of the Commercial. The proof shows that the assets of the American were indicated on the books on July 31, 1914, approximately three million nine hundred thousand dollars. Mr. Scott added to those resources approximately one million and one hundred thousand dollars, by reason of the trade with the Commercial.

The Commercial's liabilities assumed by the American were approximately one million and one hundred thousand dollars. It is thus shown that the American did purchase the assets of the Commercial, taking charge of all the assets, but with a right to retain for itself an amount of these assets equivalent to the liabilities assumed, to-wit: One Million One Hundred Thousand Dollars.

Sec. 3, page 49-50.

Mr. Scott. At page 49 and 50, witness Scott testified that after August 1, 1914, all disbursements in the name of the Commercial National Bank were O. K'd. by officers of the American and that that O. K. related to the propriety of the amount of the expense charged.

The expense vouchers put in evidence by the plaintiff showed that every one of them had received the O. K. of an American officer.

Sec. 3, page 55.

Mr. Scott. At page 55, the witness testified that whatever money was necessary in course of this liquidation was turned over each day by the American National Bank to the clerical force.

Sec. 3, page 57-58.

Mr. Scott. Mr. Scott testified about handing the monthly statements to Mr. DeBorde, who was merely a teller. He testified that the ordinary manner of handling these statements was to have them finally submitted to a responsible officer.

Sec. 3, page 44.

The letter written by Mr. Scott after consultation with the President of the Bank and deliberately sent out to the Stockholders and customers said in part:

"We take pleasure in announcing that this bank has absorbed the Commercial National Bank of this city."

328 The concluding paragraph showed definitely that the business the following week, which began August 3, 1914, was to be handled by the officers of the American, and that the Commercial's business was to pass immediately to the American. This letter was not sent out until after the trade was made as shown by the testimony, on page 44.

Sec. 3, page 70.

At this page is shown the advertisement inserted by Mr. Taylor in the Macon papers in The Telegraph on August 2, 1914, and in The News on August 5, 1914. This was an announcement to the world, including the shareholders of the Commercial. This announcement was in thorough accord with the resolutions of the Directors of the Commercial of August 1, 1914, and with the notice sent to the Commercial shareholders.

The advertisement announces: "We are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National

Bank of this city has been affected. The assets of the Commercial National have been taken over, and we will take care of all the business formerly handled by the Commercial National."

The advertisement deals with the deposits as having been transferred; the evidence showing that there was a period of humoring depositors in order to guard them against their taking their accounts elsewhere. The advertisement shows that the money of the Commercial had been transferred to the American.

The advertisement distinctly requested that checks should be written on the blanks of the Commercial until the accounts had been formerly transferred.

Sec. 3, page 71.

The advertisement of the Commercial, prepared in the office of counsel for the American, dictated or supervised by the President of the American, and receiving the same publication as the advertisement of the American, contained the following:

"We are pleased to announce that a merger has been perfected with the American National Bank, and this institution. All the assets of the Commercial National Bank have been transferred to the American National, the deposits in the Commercial National having been placed with the American National to the credit of our depositors."

The letter further indicates what is hoped will be the effect of the merger.

This advertisement also indicates that the stockholders at their meeting on August 12th, would be called on to ratify the merger.

The concluding paragraph is a Swan Song of the officers and directors of the Commercial, showing without possible doubt the retirement of the Commercial from the banking business.

The request of the American is repeated that for the time being checks on the Commercial should be used.

Sec. 4, page 8.

At page 8 Mr. Mallary testified that everything belonging to the Commercial National Bank was
329 on August 3, taken to the American, and that the Commercial as a bank went out of business.

Sec. 4, page 36.

Mr. Mallary. At page 36 Mr. Mallary testified as to the control by the American of the administration of the Commercial's assets after August 3, 1914.

Sec. 4, page 58 and 59.

Mallary. At pages 58 and 59, Mr. Mallary testified as to the absolute retirement of Commercial Bank from business, and on page 61 Mr. Mallary testified that when the written contract was presented for signature, the Commercial Bank was out of business and that the American had the Commercial at that time.

Sec. 4, page 66.

Mr. Dure. Mr. Dure, testified that the Commercial National Bank as a bank did not transact any business after August 3, 1914, or after August 1, 1914.

Sec. 4, page 68-69.

Dure. Mr. Dure testified as to the functions of the Commercial shareholders' Committee, stating that they acted only in an advisory way and did nothing on their own initiative, dealing with such matters as were submitted by Mr. Hillyer and Mr. Taylor.

Sec. 4, page 106.

W. T. Anderson testified that the Commercial operated as a going concern for the last day on Saturday, August 1, 1914, and on August 3, 1914, the assets of the Commercial were transferred to the American. He testified that the Commercial, as a bank, did not conduct any further business.

Sec. 4, page 110.

Mr. Anderson. At page 110 Mr. Anderson described the preparation of the advertisement which appeared in the Macon papers Aug. 2 and Aug. 3, 1914.

Sec 4, page 126.

Mr. Anderson. At page 126, Mr. Anderson testified to the transfer of all the Commercial's assets, "Bag and baggage" to the American, on August 2 or August 3.

Sec. 4, page 144.

Mr. DeBorde. At page 144, Mr. J. M. DeBorde testified that the Commercial Bank ceased the banking business on August 1, 1914, and that he (DeBorde) went to work on Aug. 3, 1914, with the American National Bank.

Sec. 4, page 179.

Mr. DeBorde. At page 179, he testified that no new loans were made after Aug. 3, 1914.

Sec. 5, page 1.

330 L. O. Benton. Mr. Benton testified that the Commercial Bank went out of business on August 1, 1914.

Sec. 5, page 1.

Mr. Benton. L. O. Benton testified that he was in Macon on August 7th and spoke to the officers of the American as to the transfer of stock and that the officers said that it could not be transferred because the Commercial Bank was out of business.

Sec. 5, page 29.

Sec. 6, page 44.

Mr. Lewis. Mr. Taylor is shown to have sold bonds and reported sale for confirmation.

Sec. 6, page 49.

Mr. Lewis. Mr. Lewis testified that the action of the Commercial's committee and directors with respect to the U. S. bonds was brought about by a report of R. J. Taylor to the Committee, that he had sold the bonds.

Sec. 6, page 78.

At page 78 is shown a portion of the minutes of the American Directors Aug. 7, 1914. At that meeting the

American authorized Mr. R. J. Taylor to appoint a committee of three to assist Mr. Taylor in looking after the affairs of the Commercial Bank, "which bank was absorbed by the American National Bank of Macon."

Sec. 7, page 26.

Mr. Scott. Mr. Scott testified that the American National Bank suspended business on December 7, 1916, and went into liquidation. He stated that it retained its corporate existence after the date mentioned and that he as cashier executed a good many documents for further assurance, quit claims and claims of that sort. The record in this case shows that the present suit was instituted in the name of the American, after it had entirely suspended business.

Report of Master, page 22.

The letter written by E. C. Scott to the Comptroller on August 1, 1914, shows that the agreement between the Banks should be a practical consolidation by a purchase on the part of the American of the assets of the Commercial; and that pending the formal action of the stockholders, and in the event the formal action was not taken as contemplated the assets should be held as security. This letter is in thorough accord with the second paragraph of Sec. 6 of the contract wherein it is indicated that the real trade was that of consolidation by purchase along with liquidation; but if there
331 was any interference in the contemplated arrangement, then in that event, the American would be considered as holding the assets as security. This letter distinctly notified the Comptroller that upon action of the stockholders on August 12, there would be

in full effect a consolidation by purchase and its technical liquidation of the Commercial's assets. This trade had already been made and entered into; all that remained to be done being the formal vote of the stockholders by way of ratification and the adoption of liquidation resources. This letter definitely showed that the officers of the American thought the assets of the Commercial sufficient to discharge its liability, and shows that the reason for the trade was that the Commercial was without ready money or quick assets. This concluding paragraph of the letter again refers to the perfection of the plan of liquidation and consolidation.

Section 7, page 89.

The Comptroller's letter of August 6 showed that he definitely understood that there would be a practical consolidation of the two banks and that the only feature of security was in the event the definite plans were not carried out and that this feature of security was to protect the American for amounts paid out in advance of formal action of the stockholders and in the event the stockholders did not ratify the trade.

In this letter the Comptroller states that he will await further details as to the consolidation.

Sec. 7, page 90.

In the letter of August 7, at page 90, the Comptroller again writes Mr. Taylor about the consolidation with an incidental plan of liquidation. In this letter, the Comptroller notes that the consolidation is to be effected in accordance with Section 5223 U. S. R. S. and that the bond will be transferred in accordance with Sec. 5223.

Sec. 7, pages 91-92.

Again, on August 8, 1914, as shown on page 91-92 Mr. Taylor writes the Comptroller with reference to the details "of this consolidation."

Sec. 7, page 92.

At page 92, the Comptroller, under date of Aug. 12, 1914, shows that he had been notified that the assets of the Commercial had already been transferred to the American. He stated that no examination would be required at that time in connection with the consolidation.

Sec. 7, page 93.

Mr. Scott. On August 13, Mr. Scott wrote the Comptroller that the American had taken over the
332 Government moneys which had been on deposit with the Commercial.

Sec. 7, page 95.

From Comptroller. The Comptroller writes to Mr. Taylor with reference to "the consolidation."

Sec. 7, page 96.

From Mr. Taylor. Again on Aug. 19, 1914, Mr. Taylor writes the Comptroller with reference to "the consolidation."

Sec. 7, page 89-101.

From Mr. Scott to Comptroller. The third paragraph of a long letter written by Mr. Scott October 1, 1919, to Comptroller, shown on pages 98 to 101, in this third

paragraph on page 99, it is clearly shown that the directions which the American gave the handling of business prior to the actual vote of the stockholders of the Commercial was given only in contemplation of the possibility that the stockholders of the Commercial would not ratify the contract and vote for the formal liquidation. That paragraph shows that the American had purchased these assets, but that they were kept as a thing apart pending the formal action of the shareholders.

The paragraph reads as follows:

"Pending this action by the stockholders, we have not thought it proper to transfer absolutely and as a part of the assets of this association the assets of the Commercial National nor to assume in toto its liabilities. The business between the two institutions had, therefore, (in view of the possibilities that the shareholders might not ratify), been handled in the following manner."

Sec. 7 page 102.

Comptroller to Hillyer. Again as late as October 15, as shown at page 102, the Comptroller wrote to Mr. Hillyer with reference to the completion of the plan under Section 5223 U. S. R. S.

Sec. 7, page 103.

Hillyer to Comptroller. As shown at page 103, Mr. Hillyer wrote to the Comptroller as follows:

"We took the bank over on the morning of Monday, August 3rd."

Sec. 7, page 111.

The Comptroller, as shown by his letter of Sept. 25, 1914, at this page, the Comptroller had construed the entire transaction as one of purchase and practical consolidation, and he deemed that the Company's assets should be reported by the American along with its own.

333 Sec. ...., page .....

It is borne in mind that all this correspondence and whatever additional correspondence was engaged in has been in possession of the plaintiff, the defendants having no access to it and the defendants not now knowing what other correspondence passed.

Sec. 7, page 120.

The letter from the Commercial to the Comptroller, dated August 3, shown at page 120, shows that the purpose of the transaction of August 1, was the sale of the assets of the Commercial to the American for a practical consolidation.

This letter further shows that the assets of the Commercial were "Actually transferred" to the American prior to the writing of the letter.

Sec. 7, page 120-121.

Mallary to Comptroller. On August 5, 1914, Mr. Mallary wrote the Comptroller characterizing the transfer as one of a consolidation with incidental liquidation.

The Comptroller's letter to Mr. Lewis dated Aug. 6, 1914, shown at page 21, throughout its full text, indicates his understanding that the American was purchasing the assets for a practical consolidation.

The same is shown at page 124 in Mr. Lewis' letter to the Comptroller under date of August 8th.

Sec. 7, page 125.

Lewis to Comptroller. The letter of August 3, 1914, from Mr. Lewis to the Comptroller, together with the enclosures sent to the Comptroller shows beyond any possible doubt that the intention was to sell the assets of the Commercial to the American for the purpose and effect of what Pratt designates as a practical consolidation.

This letter went with a copy of the contract which the Comptroller had before him at all times after August 14.

Enclosures No. 5 mentioned in the letter was a statement of the condition at the close of business August 14, 1914, the time of the transfer to the American.

Sec. 8, page 39.

Mr. Taylor. Mr. Taylor was asked the question:

Q. "The Commercial National Bank went out of the banking business Saturday, August 1st?"

A. "Yes, sir. You might say that was the last day business was done."

Sec. 8, page 57.

Mr. Taylor testified that for sometime after the American took the business of the Commercial beginning on August 3, 1914, the American had two or three of the Commercial's clerks in connection with the liquidation or administration. He stated that for a day or two

there might have been more than two or three, but that it narrowed down to probably two or three after the rush was over.

334 Sec. 8, page 59.

Mr. Taylor was asked whether the Commercial's papers were kept separate, he answered: "Yes, sir, as far as I could recall that was a matter of detail with Mr. Hillyer—I mean with the others."

XXI.

That the Master stated and certified under R, on page 42 of his said report, that

"The method of book-keeping and accounting in use by the Commercial prior to removal to the American's building was continued after August 1st. On August 3rd an account was opened with the American on the ledger of the Commercial just as an account would have been opened with any bank with which the Commercial began to do business at any time prior to August 1st."

In so finding the Master erred:

(1) Because there is no evidence to support such finding.

(2) Because such finding is contrary to the evidence.

The Master should have found that on August 3rd, at the direction of officers of the American an account was opened with the American on the ledger which had previously been used by the Commercial. This was not

done just as an account would have been opened with any bank with which the Commercial began to do business at any time prior to August 1st, 1914, but was done for the convenience of the American in its administration of the Commercial's affairs, and particularly to enable that bank to properly account for the overplus which would be due shareholders of the Commercial under the agreement, if any.

In support of this exception, reference is here made to evidence heretofore cited under Exception VII, XX and XX and that cited hereinafter under Exception XXXV and XXIV.

335 XXII.

That the Master stated and certified in his said report at page 43 thereof as follows:

"If the affairs of the Commercial National Bank were being administered by the American National Bank under a plan or agreement whereby after the administration had been completed, the overplus remaining after realizing on the assets and paying all liabilities and expenses of administration, was to be payable to stockholders, the system of book-keeping in use by the Commercial would enable the details of all transactions to be correctly kept, and accurately show the result of the liquidation. If the American was the purchaser of the assets and they were being administered as the assets of the Commercial through the American as liquidating agent and the liquidation agent being under obligation to wind up the business of the Commercial and make quarterly reports to the Comptroller, the system of book-keeping already in use by the bank would be the natural one to continue in use. In either case, however, the

account kept by the bank, the one with the other, showing one as debtor and the other as creditor, would be mere memorandum accounts, and only as to the amount shown, whether an overplus or a deficit would the account be correct."

In so finding, the Master erred, the error being harmful and prejudicial to defendants.

The findings and conclusion of the Master, as herein before set forth, is not clearly understood; but upon the theory that the conclusion reached by the Master is to the effect that the method of accounting, which was adopted, was more voluminous, extended and detailed than would have been necessary if the contract was one by which the American purchased the assets of the Commercial with an obligation to pay over the excess to the shareholders of the Commercial, this exception is presented.

If such be the real meaning of the finding and conclusion of the master that finding and conclusion is without evidence to support it and is contrary to the evidence.

336 The Master should have found, as is shown to be the fact by the testimony of Creed Taylor, sec. 1, page 182, 186, 187; the testimony of J. M. DeBorde, Sec. 4, page 176, 177, 181, the testimony of R. C. Souder, Sec. 3, page 24 25, 31; and the testimony of L. S. Dure, Sec. 4, page 65, that the method of accounting and the records which were actually kept of the Commercial's affairs on and after August 3rd, 1914, were such records as would have been necessary if the contract were one by which the American National Bank purchased the assets of the Commercial, in a plan of practical consolidation, agreeing to pay to the share-

holders of the Commercial any excess of assets over liabilities resulting from a liquidation of the affairs of the Commercial.

This evidence is set out in part by the Master at pages 128-130 inclusive, of his report.

## XXIII.

That the Master stated and certified in his said report under 11 (a) and in the third paragraph on page 44, that

"The ledger of the American is a loose-leaf book, and the account with the Commercial was kept in duplicate. The original referred to as 'statement' was turned over to the Commercial monthly, usually to DeBorde, and the duplicate retained by the American and transferred to its ledger binder."

In so finding the Master erred:

(1) Because there is no evidence to support such finding.

(2) Because such finding is contrary to the evidence.

The Master should have found that no account was kept with the Commercial on the ledger of the American but that for the convenience of the American in the administration of the Commercial's affairs memoranda entries were made on the books of the American, and likewise on the books which had formerly belonged to the Commercial, and that these entries were made solely to show the overplus

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which would be due the Commercial shareholders when and as the same matured.

The evidence sustaining this exception in the same as that heretofore cited under Exceptions XX, XXIV XXXV.

(3) Because the finding of the Master that the turning over of the "statement" to DeBorde was a delivery to the Commercial was erroneous and without evidence to support it. The uncontradicted evidence shows that J. M. DeBorde, the person referred to, had been a paying teller of the Commercial National Bank on and prior to August 1, 1914; that at the request and suggestion of W. T. Anderson, R. J. Taylor, President of the American, employed DeBorde and other clerks to assist him in the handling of the assets and affairs of the Commercial, Mr. Taylor feeling the need of additional clerical help and feeling that in the practical and legal liquidation of the afafirs of the Commercial, he needed the services of persons who were familiar with those affairs; that DeBorde and other former employees of the Commercial were subject to the direction of Taylor, President, and Hillyer, Vice-President of the American; that they were paid on expense vouchers, carried as expenses of administration or liquidation, which expense vouchers required the O. K. of an officer of the American; that these former employees of the Com-
338 mercial were not only employed and controlled by the officers of the American, but were relieved or discharged by those officers; that DeBorde's work was always that of clerk or teller; and that under the practice of banks, such clerk or teller was not a proper representative of the bank to whom a statement of the kind referred to should be submitted.

The evidence sustaining this section of the exception is cited under exceptions VII, X, and XX.

XXIV.

That the Master stated and certified under subdivision B, on page 45 of his said report, that

"The account of the Commercial on the ledger of the American National Bank soon showed a balance due by the Commercial National Bank, representing the difference between the amounts deposited to the credit of the Commercial and the amounts advanced by the American to the Commercial, on its drafts, and charged to the Commercial."

In so finding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such finding fails to show the true status of the arrangement for book-keeping which had been adopted by the American.

The Master should have found that the memorandum account shown on the ledger of the American soon showed a deficit of the Commercial assets by reason of advance payments by American on the purchase, and that this deficit was never wiped out by the liquidation of the Commercial's assets, and, accordingly, that there was no overplus every shown by either the memorandum

entry on the books of the American or the memorandum entry on the books formerly belonging to the Commercial.

339 See evidence in support of this exception cited heretofore under Exceptions III, XX, ..., also testimony of Mr. Scott, Section 2, pages 2, 6, 11, 12, 14, 19 and 21; also drafs, ledgers and statements. See also the evidence hereinafter cited under Exception XXXV and XXXVIII.

Such finding was also error on the part of the Master, in that the Master here should have found, in addition to the finding above specified, that this overdraft was not by virtue of any agreement between the two banks, or the respective officers of each, but merely the result of the method of book-keeping decided upon by the American for the convenience of the American.

In this connection see the finding of the Master as set out on page 109, second paragraph from the bottom, to the effect that the allegation in the amendment to plaintiff's bill that by agreement the account was carried as an overdraft against the Commercial, had not been sustained by the proof.

On page 18 of the record, Section 4, Mr. E. Y. Mallary testified that he never made any agreement with any officer of the American, that any balance in the accounting at any time should be carried as an overdraft or should be included in loans and discounts. He further stated that he was never asked to make any such agreement. Likewise, on page 64, of Section 4, Mr. Dure testifies that there was no agreement made with him, or with the officers, or the finance committee of the Commercial, that any balances in the administration handled by the American should be carried as an overdraft, or in loans and discounts, and that there was never any agreement that the assets of the Commercial

should be held as security for overdrafts. On page 95 Mr. Dure repeats his testimony to this effect, and here again states that the Commercial went out of banking business on August 1, 1914.

On page 107, Mr. Anderson states that he had never as a member of the finance committee, or individually, agreed with any officer of the American that any balance in the accounts should be carried as an overdraft, or should be carried as loans and discounts or should be carried as an item due the American National Bank.

On page 126, Mr. Anderson testified that he had no knowledge of what entries were made on the books on and after August 3, 1914.

340 On page 129 of Section 4, Mr. E. Y. Mallary testifies, that he, as president of the Commercial, negotiated and made the trade between the two banks; he testified that he understood the assets were taken as cash, and that there was no question of any notes or security; and, on top of page 130, he testifies that there was absolutely no question about any loan.

In Section 5, on page 39, Mr. L. O. Benton, testifies, that in his dealing with the officers of the American, he had never heard any contention that the American was lending money to the Commercial, and that he thought the American was holding assets of the Commercial as purchaser.

## XXV.

That the Master found, stated and certified at page 52 that after August 1, 1914, eight suits were filed by or against the Commercial National Bank, in the Superior Court of Bibb County; and that of these, four were filed

by persons who were directors or stockholders of the Commercial against the Commercial Bank et al, to-wit: by W. T. Anderson, Leon S. Dure, L. O. Benton and John J. McKay; and that the Master further found that four suits were filed by the Commercial National Bank on notes payable to said bank, the latter being filed in the City Court.

In so finding in the limited and incomplete form of the finding, the Master erred, the error being prejudicial and hurtful to defendant;

Because the Master should have set forth clearly and fully the nature of the suits referred to. The Master should have stated that the four suits brought by the persons named and referred to as directors and stockholders of the Commercial were brought against the Commercial National Bank and the American National Bank and were brought to recover for services rendered to the American National Bank in its control, management and disposition of the assets of the Commercial; and that the Commercial Bank was joined as a party for the formal and necessary reason that the contract obligated the American to pay the expenses of the administration was between the Commercial and the American; and that, therefore, the suits were
341 required to be brought in equity with the Commercial as a party defendant; and the Master should have found for this reason, and for this reason only, the Commercial Bank was made a party.

Because the Master further erred in not finding, as was the fact shown by the record, that the four suits in which the Commercial National Bank appeared as plaintiff were suits brought in the name of the Commercial and not by the Commercial as a bank, the records showing that the American in realizing on the assets of the

Commercial, frequently, as it conceived it had the right to do, used the name of the Commercial.

Reference is made to the records of the suits referred to, which, by agreement of counsel and understanding with the Master, will be accessible and available at any and all times.

XXVI.

That the Master found, stated and certified at pages 52 and 53 that:

(1) The Commercial Bank appeared as petitioning creditor in two involuntary petitions in bankruptcy; one filed August 21, 1914, against J. H. Virgin, verified by E. H. Lewis, Cashier, and the other filed November 14, 1914, against Mallary Mill Supply Company, and verified by J. J. Cobb, Vice-President; and

(2) That on November 3, 1914, Albert L. Patterson, et al, two shockholders of the Commercial, filed their bill in the United States District Court at Macon against the Commercial National Bank, its directors and members of the stockholders' committee; and that an answer was filed, excerpts from which are re-
342 ported by the Master, the Commercial being represented by its counsel, A. W. Lane, and the American National Bank, a joint defendant, by Hardeman, Jones Park & Johnston, its attorneys.

This error of the Master consists in his making said finding in a limited and restricted way, prejudicial and harmful to these defendants.

The Master should have found that the American National Bank in its handling of the assets of the

Commercial, which came into its hands on August 1, 1914, which it had purchased with the obligation to account to the shareholders of the Commercial for any excess of assets over liabilities of the Commercial, and which it controlled, first for the purpose of practical liquidation from August 3, 1914, to September 30, 1914, and after September 30, 1914, as the duly selected liquidating agent of the Commercial, saw fit to bring the two petitions in bankruptcy referred to by the Master; and for some reason best known to itself, preferred to bring the proceeding in the name of the Commercial National Bank.

There is no evidence to authorize the finding that these proceedings were brought by the Commercial National Bank. The record of evidence shows that Hardeman, Jones, Park & Johnston, who appeared as counsel for the Commercial National Bank, had never been counsel for that bank, but were the regularly employed counsel of the American.

The Master further erred in said finding in failing to state the full history of the case of Patterson et al, and in failing to state that the attack there made was on the integrity and propriety of the contract between the two banks and on the regularity and legal effect of the liquidating resolutions of the Commercial.

Reference in support of this exception is made to the Court records and the pleadings in said cases, which under agreement of counsel and the understanding with the Master, are to be used as a part of the record at any stage of these proceedings.

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344 XXVII.

That the Master stated and certified under subdivision 14, on page 53, of his report, that

"The Commercial National Bank, at various times through a period of two years, made conveyances of real estate, the consideration amounting to many thousands of dollars. Some of the sales were to the American and some to other parties. In a settlement with W. E. Small, his home was purchased at a valuation of $12,500.00, and some time later purchased by the American for $10,000.00.

"By deed dated July 10th, 1916, the Commercial National Bank conveyed its banking house to the American National Bank at a valuation of $40,000.00.

"The building had been offered for sale through real estate dealers, and also after advertisement at public outcry. No satisfactory offers having been made, the building was purchased by the American National Bank."

In so finding the master erred:

(1) Because such finding is contrary to the evidence.

(2) Because such finding is only a partial finding, and does not set out the reason nor causes for such conveyances on the part of the Commercial.

The Master should have found that at the direction of the American, the Commercial at various times made conveyances of real estate. This, however, was done at the direction of the American, and in accordance with the agreement wherein it was provided that the Commercial should retain its corporate existence, and should perform through its officers such corporate acts as would be necessary in effecting the liquidation of its affairs. The Master should have found, as shown by the evidence, that the American National Bank, during the

process of liquidation or administration, found it convenient to cause conveyance to be executed in the name of the Commercial National Bank; that the Commercial National Bank had, previously to August 3, 1914, taken conveyances to itself, some absolute in form and intent and some in the form of security deeds; that the Commercial had, during the period of its active banking business, acquired interests in and liens on
345 divers property; and that in order to make settlements and collections of the assets of the Commercial, it was more convenient to have conveyances executed in the name of the Commercial than to rely as record or minument of title upon the directors' resolutions, the contract and the action of the shareholders of the Commercial in effecting the transfer of the Commercial's assets to the American.

The Master should have reported, in connection with his said finding, that said conveyances so made by the Commercial furnished no indication that the Commercial continued a banking business; and should have further found that, as shown by the abstract of said conveyances and the testimony of witness R. C. Souder, that many of the conveyances referred to by the Master were executed by the said R. C. Souder after the said Souder ceased to be Assistant Cashier of the Commercial, as related to any banking business, after the said Souder had severed his connection with the administration forces at the American National Bank building, and after the said Souder had become permanently associated with the law firm of Hardeman, Jones Park & Johnston, attorneys for the American National Bank.

The Master should have found, in connection with his report of conveyances made in the name of the Commercial National Bank, and particularly with reference to the American National Bank Building, that inasmuch as

real estate has no definite, fixed or face value, and inasmuch as the American was obligated, after administering the assets and affairs of the Commercial, to pay to the shareholders of the Commercial all excess of assets over liabilities, it was entirely proper and consistent with the theory of the defendant's case, that an agreement should be reached between the American and the committee of the Commercial shareholders as to the value at which the Commercial bank building was to be taken by the American.

346 And the Master should have further found, with respect to this bank building, that inasmuch as the record title was in the name of the Commercial National Bank, any transfer of said property to the American would be more clearly, conveniently and economically shown by a conveyance to the American with the name "Commercial National Bank" as grantor than by a registration of the director's and stockholders' resolution and the contract as a transfer of title.

See, in this connection, record No. 7, page 7, Section 1, page 91. See, also, paragraphs ..... and ..... of the contract attached as Exhibit A to Plaintiff's Bill.

347 Defendants except to the following portion of finding No. 15, page 54; and aver the Master erred in so finding and the same was prejudicial to them.

"It is true however, that from August 3rd to October 31st, 1914, E. N. Lewis, Cashier of the Commercial and immediately in charge of the accounting of the Commercial, must have known that according to the books of the Commercial the amounts so advanced by the American", on the following grounds:

Because it assumes that E. N. Lewis was at that time acting as the Cashier of the Commercial and immediately in charge of the accounting of the Commercial; which assumption is not only not authorized or supported by the evidence, but is absolutely rebutted by the evidence.

The only evidence cited by the Master in support is that of R. J. Taylor who was asked the following question:

Q. "In making the arrangements, working out the arrangements between the two Banks, the details of handling the accounts and so forth, do you know who represented the Commercial National Bank, who was the active man for them?"

To this he answered:

A. "Well, Mr. Nat Lewis, I suppose he was the leading man."

This is only a supposition on Mr. Taylor's part, based on no facts and is of the probative value. Especially is this true when his answer is read in connection with the context.

(See Section 8-20-1, and his cross examination on pp. 34.)

In rebuttal of this Exceptor refers to the statement of the said Lewis embodied in a letter written by him to John T. Lewis after the Commercial was moved to the American National Bank Building and which letter was introduced by the plaintiff wherein he says—"You

are entirely mistaken in the idea that I am familiar with the present status of the Bank' affairs."

The Exceptor refers to the following evidence of E. Y. Mallary, (See Section 4 page 13).

Q. "What supervision or exercise of authority of any kind did you have over anything that was done by the former employees of the Commercial National Bank at the Banking House of the American National Bank on and after August 3rd, 1914?"

A. "I had none at all."

348 Q. "Who did have that supervision?

A. "That was practically done by Mr. Hillyer.

Q. "Were you consulted about it at all?

A. "No, sir.

Q. "State whether or not any officer of the Commercial National as such directed or supervised any part of this work?

A "The only officers of the Bank that were there at all were Mr. Lewis and Mr. Souder and Mr. Lewis was under the instructions of Mr. Taylor and Mr. Hillyer."

Also his evidence on page 15 as follows:

Q. "What act was Lewis authorized to perform for the Commercial National Bank, Mr. Mallary, on and after August 3rd, 1914?

A. "None, except under the directions of Mr. Hillyer and Mr. Taylor.

Q. "The contract in this case provides that the Commercial National Bank should maintain its corporate existence and that its directors should at all times, when called on to do by the American National Bank,

execute and deliver in the name of said association all other and further writings of any kind which may be necessary to fully effectuate the transfer of said assets or the liquidation of the Association under this contract; What if anything was Mr. Lewis expected to be called on to do in connection with the transfers of money or other assets to the American?

A. "He was expected of course to transfer all of the assets to the American National Bank as Cashier and in some instances, of notes for instance turn over to the American; and he was to transfer all balances, for instance, that we had in various banks to them; at their request and any other assets that belonged to the Commercial."

See also his evidence of pages 35-37.

Q. "What about checks drawn by customers of the Commercial National Bank and OK'd by the teller of the Commercial National Bank and presented to other banks for payment—how did you cover those checks?

A. "I cannot say, Mr. Park, I don't remember any instance of that kind being done; I do not recall it.

Q. "Wasn't this done by customers of the Commercial?

A. "Very likely it was. Just as I told the
349 American National Bank agreed to furnish the money to pay our depositors; and I suppose they arranged that; that was the agreement.

Q. "You do not know as a matter of fact, the Commercial National Bank drew checks regularly on the American to cover these accounts?

A. "No, sir; I know the American National Bank agreed to furnish the money, but the method they pursued in doing this I do not know. I just simply state it was

done like the American National Bank wanted it done; I do not know how that was.

Q. "But it was all handled by Mr. Lewis, Cashier of the Commercial Bank?

A. "Mr. Park, he carried out the instructions of Mr. Hillyer and Mr. Taylor. So far as that part was concerned, he did that.

Q. "So far as the Commercial National Bank was concerned he represented the Commercial National Bank in making the arrangements as to how the accounts should be earned?

A. "No, sir, the arrangements were made absolutely by the American National Bank.

Q. "How do you know?

A. "That is my understanding.

Q. "I do not want your understanding. How do you know Mr. Mallary, that the American National Bank absolutely ordered him to do this?

A. "I just know they dictated the policy pursued by the Commercial National Bank. I got that from conversations with Mr. Hillyer and Mr. Taylor and Mr. Lewis.

Q. "You will have to give the conversations?

A. "I just know that Mr. Lewis did nothing except what he was directed to by these two gentlemen; I know that.

Q. "How do you know it?

A. "He told me so, and I saw him do it.

Q. "Saw him do what?

A. "Carry out their instructions.

Q. "How do you know what the instructions were? When a man is acting, how do you know whether he is acting on his own responsibility or some one else's?

A. "I know it wasn't on his own.

Q. "How do you know that?

350 A. "We had that understanding; that was the understanding with them all; when that business was put down there the American National Bank took charge of these men, and they were directly under their control.

Exceptor alleges that this evidence establishes the fact that Mr. Lewis was not acting as Cashier of the Commercial National Bank but simply as the agent of the American National Bank and was obeying the advice and instructions of the Officers of the American National Bank and especially of Mr. Hillyer.

The Master should have found—

1st. That E. N. Lewis was not acting as the Cashier of the Commercial National Bank nor was he in immediate charge of the accounting of the Commercial but that his conduct and acts were exclusively under the orders of the Officers of the American National Bank.

2nd. That while the books where the advances made by the American National Bank were carried in the books of the Commercial as amounts due the American National Bank the said entries were made without the knowledge or consent of the Officers of the Commercial National Bank or its stockholders and were carried for the purpose of keeping a correct accounting of the funds realized from the assets of the Commercial and their appropriation by the American in accordance with the terms of the contract of August 11, 1914, so as to show the surplus which it was at the time anticipated would go to the stockholders.

351 No. XXIX.

These defendants except to finding 16, p-57, as harmful error, wherein the Master submits as a fact to be considered, 'The Commercial's Circulation Assumed by American U. S. Deposits Transferred," and avers the Master erred in submitting said fact in the manner and form there set forth for the following reason:

Said finding is not sufficiently full and does not set forth the history of said assumption of the Circulation by the American. The Master should have also found in addition the following:

"On the 13th day of August, 1914, the Board of Directors adopted the following resolution;

" 'Whereas the Commercial National Bank of Macon, Georgia, is winding up its business for the purpose of consolidation with this association, and whereas this association desires to take advantage of the provisions of Section 5223, NSRS, which provides that, "An association which is in good faith winding up its business for the purpose of consolidating with another association, shall not be required to deposit lawful money for its outstanding circulation, but its assets and liabilities shall be reported by the Association with which it is in process of consolidation:

Therefore, Be it resolved, that in consideration of the transfer to this association by the Commercial National Bank of Macon, of tne $200,000 in United States Bonds now on deposit with the Treasurer of the United States as security for Circulation of the Commercial National Bank of Macon on account of its Circulation.'"

The said Resolution was adopted on the 13th, the day following the meeting of the Stockholders of The Commercial National Bank, called in pursuance of the Resolution of its Board of Directors of August 1st, at which meeting the said Stockholders had adopted resolutions approving of the action of the Board of Directors on August 1st, and the contract of August 11, and a resolution appointing the American National Bank its liquidating agent, and in view of the times when it was adopted—as well as its terms—it indicates conclusively that the Board of Directors of the American National Bank officially recognized that they had taken over the assets of the Commercial by way of a sale, which was to be accomplished and consummated by a consolidation with their own association but without issuing stock therein to the stockholders of said Commercial Bank."

No. XXX.

These defendants except to finding No. 16, p. 59, as harmful error under the heading; "Resolution authorizing sale of a Bank Building;" and avers the Master erred in not adding to the end thereof the following finding:

"I find that the testimony does not establish that the copy offered in evidence is a correct copy of the last original if any original ever existed and, therefore it is rejected."

352

No. XXXI.

These defendants except to the Master's Finding of Fact No. 23, pp. 61-68, which is as follows:

"In considering the agreement between the two Banks, made by their Board of Directors, respectively, and evi-

denced by the resolutions, with a view to determine whether the assets were transferred to the American as purchaser, or to secure it for advances made, and to be made to the Commercial, certain writings indicating the interpretation of the parties are in evidence and are material. With regard to the writings, I submit the following facts:"

These defendants aver the Master erred in so finding upon the following grounds:

(1) Because, some of the extracts from the instruments are too meager to indicate the true meaning of the parties thereto, and other extracts are so taken as to indicate when considered alone that the assets were transferred as security, but considered in connection with the context or the whole instrument, show they were transferred by way of sale, and the Master if he undertook to specify the instruments should have given either the whole instruments or at least sufficient parts of them to show the Court clearly their true meaning.

(2) Because in each and every instance specified in said finding, the instrument referred to by the Master as interpretation of the transaction, shows upon a consideration of its contents taken as a whole, or in connection with collateral instruments that the assets were transferred by the parties as a sale and not as security, and the Master should have so found.

(3) Because, the Master omitted and the ommission is harmful error to include in said summary, the following written instruments, all of which evidence a sale and negative a loan.

(a) The letter of E. C. Scott, Cashier of American to the depositors of the Commercial Bank. (Master's rept. 24).

(b) Notice to stockholders of Commercial of meeting of 1[illegible]h of August and 30th of September, (Master's rept[illegible]).

(c) Newspaper advertisements. (Master's Rept. 25-26-27).

(d) Letter of E. C. Scott, Cashier, to Compt. October 1st, 1914. (Master's Rept. 140).

(e) Other parts of correspondence with Comptroller.

353 (f) Resolution of American National Bank assuming Circulation. (See Ex. to finding in these Exs.)

(g) Other parts of the contract of August 11th, than the small quotation from the second paragraph.

For these general reasons, these defendants aver that the Master erred and in so doing, committed error harmful to the defendant.

These defendants having thus excepted generally now, except specially to the several subdivisions in their order, and aver that in each and every instance thus excepted to, the Master committed an error harmful to the defendant.

A.

Defendants except to finding (a) as harmful error, wherein the Master says:

"That under date of August 1st, 1914, the Cashier of the American National Bank advised the Comptroller of the Currency, that the directors of the Commercial have transferred to the American, all of its assets as security for advancers."

This is error for the reason that this extract does not fully set forth the meaning of the letter from which it is taken and the Master, in order that the Court might ascertain correctly the purpose and meaning of said letter, have reported the whole letter which is as follows:

"This Bank by resolution of its Board of Directors has assumed the liabilities of the Commercial National Bank of this City, contained in a statement of liabilities furnished by the Commercial National Bank and including deposits, bills payable and other obligations. The exigencies of the situation were such that the Directors of the Commercial National Bank, as security for such advances as this Bank will be called upon to make hereunder have transferred to this Bank all of the assets of the Commercial National Bank. This was done in contemplation of formal voluntary liquidation of the Commercial National Bank by consolidation with this Bank, but without issuing stock in this Bank to the Stockholders of the Commercial National Bank. A meeting of the Stockholders of the Commercial National Bank has been called for August 12th at which time it is expected that formal action will be taken for liquidation and consolidation. In the mean time announcement has been made that all checks drawn against deposits in the Commercial National Bank will be honored upon presentation at this Bank, and the business of the Commercial National Bank will be taken over as far as

possible; the liabilities of the Commercial National Bank amount to approximately $1,000,000.00 and its resources appear to be sufficient to discharge these liabilities, although the Bank is without ready money or quick assets available for that purpose."

If the Master had so stated, said letter taken as whole, instead of sustaining the Master's final con-
354 clusion that the transaction was a loan, it would have shown that the intention of the parties was to make a sale, which is evidenced by the following statements therein:

(1) This Bank has assumed "the liabilities of the Commercial National Bank of this City."

The assumption of all its "Liabilities" necessarily means an absorption of the Commercial and an extinction of it as a bank which would only result through and by a sale.

(3) The phrase—"The exigencies of the situation were such that the Directors of the Commercial Bank, as security for such advances as this Bank will be called upon to make hereunder, have transferred to this Bank all of the assets of the Commercial National Bank," indicated very clearly that the transfer of the assets as security was a contingent matter, these assets to be held as security only in the event that the transfer of the assets as cash pursuant to the contract sale, contemplating liquidation and consolidation, was interrupted for any cause beyond the control of the American, and this construction is sustained by the next sentence, which is as follows:

(3) "This was done in contemplation of the formal voluntary liquidation of the Commercial National Bank

by consolidation with this Bank, but without issuing stock in this Bank to the stockholders of the Commercial National Bank. This indicates that the transfer of the assets as security was made contingent in view of the exigencies of the situation," and "the early liquidation of the Commercial.

But the above phrases indicates more than this—it indicates clearly that the parties at the time of the transfer intended to make a sale, which was to be accomplished by a formal liquidation of the Commercial by consolidation with the American without issue of stock and this is especially true if this letter is considered in connection with the admission of the plantiff's counsel, that at the time of the transaction, Pratts Digest was used in the framing of the contract—wherein the Author states that such a consolidation constitutes a sale pure and simple.

(4) "In the meantime" (that is, between the transfer and "the meeting of the stockholders of the 12th of August at which time it is expected that formal action will be taken for consolidation and li-
355 quidation"), "announcement has been made that all checks drawn against deposits in the Commercial National Bank will be honored on presentation at this Bank and the business of the Commercial National Bank will be taken over as far as possible."

This indicates clearly that pending the call of the Stockholders' meeting for formal action on liquidation and consolidation, the American would proceed to take over the business of the Commercial as far as possible; that is, as far as it could be done without formal action of liquidation and consolidation, by which course the sale made by the parties was to be consumated. Es-

pecially does the phrase "the business of the Commercial National Bank will be taken over, as far as possible," indicate the intention to purchase and extinguish the said Bank.

(5) And as evidence that the American did not contemplate a loan, it stated further in said letter, "the liabilities of the Commercial National Bank amount to approximately $1,000,000, and its resources appear to be sufficient to discharge these liabilities, although that Bank is without ready money or quick assets available for that purpose." This clearly indicated that the American in taking over the business of the Commercial had no apprehension at that time of loss, and was satisfied with its bargain.

For all of the foregoing reasons defendants say the Master erred in submitting as a fact the use of the word "security" in said letter as evidence to be considered in establishing a loan, but he should have found it as a fact that the letter taken as a whole indicated a sale.

"B."

Defendants except to the finding of the Master under heading (6), page 61, as harmful error, wherein he states that the preamble of the contract of August 11th, "recites the action of the Directors of the Commercial National Bank, as shown by their resolution, to have been the transfer of all the assets of the Commercial to the American, in order to protect and fully secure the said American National Bank for all moneys advanced or to be advanced by said Association, etc."

Defendants aver that the Master committed error harmful to them on the following grounds:

(a) Because the preamble from which the above quotation is taken does not justify the suggestion of the Master, that it is a fact interpretating said transfer as being made to secure a loan.

356 (b) The Master errs in thus selecting a single phrase of instrument and submitting that as a fact to be considered in determining whether the transfer was by way of sale or as security, but should take the whole instrument, under consideration.

These defendants aver, and the Master should have found, that on the contrary the preamble taken as a whole indicates clearly that the transfer was made under the resolutions in pursuance of an absolute sale which was to be consummated by a liquidation of the Commercial National Bank and consolidation of the same with the American National Bank without issue of stock in the latter Bank to the stockholders of the former.

In support of this exception, defendants cite the following portions of the preamble:

(1) Whereas on the 1st day of August, 1914, the Board of Directors of the Commercial Bank, at a meeting of said Board duly and regularly called adopted a resolution which authorized the officers of said association to commence proceedings for the liquidation of said association under Sec. 5220 and 5223 of the U. S. Revised Statutes for consolidation with said American Bank."

This language clearly indicates that the parties, both banks, recognized that the transfer of the assets referred to in the context and quoted by the Master was made in view of liquidation and solida with the American

and thus qualified the quoted sentence does not sustain the theory of a loan, but a sale and the Master should have so found.

(2) "And which resolution further provided that said American National Bank should take over the business of the said Commercial National Bank", which language clearly indicates a sale inasmuch as a creditor does not either in law or fact take over the business of a debtor to secure a loan, but buys it.

(3) "Liquidate said assets and accounts to its stockholders of said Commercial National Bank for any overplus which might remain after paying the indebtedness and other depositors of said Commercial National Bank in full and the Expenses of realizing on the assets so transferred, etc."

This language indicates that the Commercial has ceased or would under the contract, cease to exist and therefore the surplus purchase money was to be paid to the stockholders which extension could only be brought about by a sale, to be consummated under the terms of the contract by a consolidation of the Commercial with the American without the issue of stock in the latter bank.

In this connection, defendants also cite the following portions of the contract, which negative absolute the construction inferentially on this quotation from the preamble by the Master:

357 (1) "That said Commercial National has transferred, assigned, conveyed and confirmed and does by these presents transfer, assign, convey and

confirm unto the American National Bank of Macon, Georgia, its successors and assigns all of the assets of every kind and description including cash and cash items on hand at the close of business on August 1st, 1914, Bills Receivable, bonds, real estate and personal property and interests therein and choses in action of all kinds, including all of the United States Bonds now on deposit with the Treasurer of the United States as security for the circulation of The Commercial National Bank of Macon and for deposits of the U. S. deposits; to have and to hold the same unto it, said The American National Bank, its successors and assigns in fee simple forever," accompanied with the usual warranty of title to all of said property.

This paragraph of the contract indicates:

(a) That the Commercial has transferred, assigned, conveyed and confirmed all its property into the American National Bank in fee simple forever, with warranty of title, signifying an absolute and complete sale.

(b) Moreover, it presently, at the time of the conveyance, "transfers, assigns, conveys and confirms" it to the American, signifying that if the theory of the transfer for contingent security pending liquidation and consolidation is adopted, which exceptors deny, the Commercial now conveys the title to carry out the sale and perfect it.

(c) The complete extinction of the Commercial by the American's absorption of its assets.

(d) Especially by its taking over the Bank's deposits with the U. S. Treasurer to secure its circulation which it assumed.

(e) The use of the words—"Cash and cash items on hand at the close of business on August 1, 1914," indicates that the Commercial ceased to do business on said day as the whole paragraph clearly declares the American took over the business on that day.

(2) The 2nd paragraph of the contract wherein the following occurs:

"That in contemplation of the liquidation of said Commercial National Bank, etc., said Commercial National Bank by its officers and Directors will call a meeting of its Stockholders to be held on August 12, 1914, etc., * * * and will procure proper resolution by said stockholders * * * liquidating said Commercial National Bank with the American National Bank of Macon, Ga., by the purchase of the assets of said Commercial National Bank by the American National Bank but without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank."

This language clearly indicates:

(a) That 11 days after the transfer of the assets of the Commercial on the 1st day of August, both Banks admitted that the transfer was made in view
338 of the consolidation of the Commercial with the American by the purchase of its assets by the latter Bank, and even if the theory of the Master which exceptors deny be admitted, to-wit: that the original transfer of the assets were made to secure the American for advances made and to be made, the purchase as originally contracted had been consummated by the parties on the 11th by the contract.

(3) The 3rd portion of the contract wherein the Commercial agrees to procure the adoption of proper resolutions by its stockholders, "appointing the American National Bank" which relation is absolutely inconsistent with that of a creditor.

(4) The 5th paragraph of the contract wherein the American assumes the redemption of the circulating notes of the Commercial by which it extinguishes both as a matter of law and fact, the existence of the Commercial as a Bank, the legal process of which is utterly inconsistent with the relation of creditor and debtor. Such assumption extinguishes all relation between the Commercial and the Treasurer of the U. S. substitutes the American in its place, with all the obligations and liabilities incident to the circulation of a National Bank to the U. S. Government in the maintenance and redemption of its circulating notes, and defendants say that this is utterly in conflict with the relation of creditor and debtor.

"C."

Defendants except to the finding of the Master under heading C, p. 61, as harmful error, wherein he states that on paragraph 2 of the contract the Commercial National Bank agrees to procure a proper resolution from its stockholders ratifying and confirming the action of its Board of Directors, "as herein recited," the action recited in the contract being that as above stated, on the ground that this finding confines and limits the words "as herein recited" to the transfer of the assets as security, whereas they refer to all that has been and was being done by the Commercial to carry out the sale made originally by the parties and the Master should have so found.

"D."

Defendants except to the finding under the head (d) page 62 as harmful error, where he states that paragraph 5 (he means 6) "provides that all of the assets of the Commercial are to be held as security by the American National Bank for all advances made by it in paying depositors, etc."

The defendants aver the Master erred for the reason that this language construed in connection
359 with the context and the whole contract does not establish or tend to establish the theory of the Master that the transfer of the assets was made as "security for a loan."

These defendants aver that said phrase should be construed in connection with the preceding part of said paragraph as well as the whole paragraph and so construed it appears;

(a) That said paragraph is devoted to the subject of liquidation and outlines the method of said liquidation as agreed on by the parties in the event the said American was appointed liquidating agent as contemplated in paragraph 4 of the contract.

(b) The first part of said 6th paragraph provides "that the said American National Bank will accept the appointment as liquidating agent of said Commercial National Bank and will proceed with all due and reasonable diligence to liquidate said association and to collect and reduce to cash all the assets of said association" and then follows the phrase quoted by the Master. Said phrase is to be construed in the light of the surrounding conditions, which were, that the Commercial was to be consolidated with the American by the latter's purchase

of its assets as set forth in 2 paragraph of contract and was originally contemplated by the resolutions; that the exigencies were such that the parties could not wait until formal liquidation had begun, but arrangements had to be made to pay off the depositors of the Commercial at once; that pending the liquidation, the American agreed to advance the cash to do this; that it was understood that the American in furtherance of the understanding that it was to "purchase the assets" and "to take over the business" of the Commercial; was to be appointed liquidating agent, so as to keep in its hands all the assets and be brought thus in touch with its patrons; that this matter of liquidating agent was to be determined by the Stockholders at the approaching meeting at which this contract was to be presented and ratified; that while it was expected the meeting would authorize the appointment of the American as the liquidating agent, it was a matter yet to be determined, and in this situation, the contract undertook to deal with the matter of a liquidating agent in advance and to protect the American against any peradventure on that point; the parties agreed that in such an event the assets to be held as security for such advances
360 as the American might make. It was inserted to protect the American against loss in the event it should not be appointed liquidating agent by the stockholders at the approaching meeting, just as a later provision in the contract protects the American against loss in the event the liquidating agency was discontinued, by providing that in such event the assets should be held as security for all advances made by the American.

Thus considered, these defendants aver that said phrase should not have been submitted by the Master

as a fact to be considered in determining whether the transaction was a sale or a loan, for the reason that the appointment of the American as liquidating agent renders it impossible for the American to hold these assets as security.

"E."

Defendants except to finding under head (E) on p. 62, as harmful error, wherein the Master states that:

"The resolutions of the stockholders of the Commercial National Bank adopted September 30th, 1914, recite in the 1st preamble that the Board of Directors of the Commercial National Bank by resolution, adopted August 1st, 1914, had transferred and assigned to the American National Bank as security."

They aver that said statement in said preamble does not authorize the conclusion of fact that the Commercial's stockholders intended to recognize or to admit that such transfer was made to secure a loan, because when the same is read with the context, it appears, and said preamble states, that the said resolution was passed in contemplation "of the liquidation of the association under the provisions of Sections 5220 and 5221 of U. S. Revised Statutes," making it clear that the stockholders had in mind the liquidation of the Commercial by consolidation with the American as the resolution expressly states, and this is more apparent when the preamble is considered in connection with the list of said resolutions of September 30th which is as follows:

"Resolved, that the action of the Board of Directors of this Association as contained and set forth in the

resolution adopted by said Board on August 1, 1914, transferring and assigning the assets of this association to the American National Bank of Macon, said resolution appearing on said Board of Directors on August 1, 1914, be and the same are in all respect ratified and approved by the shareholders of this Association."

This resolution indicates that the stockholders had in mind the resolution of August 1st as a whole
361 when they ratified it and in ratifying it, they intended to do no more than the Directors did at the time of its adoption which was to transfer the assets absolutely ending the formal voluntary liquidation of the Association by consolidation with the American by the latter's purchase of its assets.

In support of this construction of the language of the preamble these defendants cite the 2nd resolution of the meeting of the 3rd of September, wherein the shareholders approve and ratify the contract of the 11th, the second paragraph of which provides in express terms for the liquidating said association and consolidating same with the American National Bank of Macon by the purchase of the assets of the said Commercial National Bank by the American National Bank, but without providing for stock in the American National Bank to be issued to the Stockholders of the Commercial National Bank.

"F."

Defendants except to finding (f), page 62, as harmful error, wherein the Master quotes from a letter of R. J. Taylor to the Comptroller, "You have been furnished with a copy of the contract between the two As-

sociations and the resolutions appointing the American liquidating agent (referring to the stockholders' meeting on the 12th), and authorizing it to hold all assets transferred to secure the payment of amounts advanced and assumed by this Association," and inferentially submits it as a fact in support of a theory of a loan, and aver that the Master erred in so finding for the following reasons:

(1) Because said phrase construed in the light of the resolutions of the stockholders and the original resolution of the Commercial of August 1st to which that of the stockholders refers, not only does not establish nor tend to establish the theory of a loan found by the Master, but on the contrary negatives this theory and establishes a sale, and the Master erred in not so finding. See original Resolutions of August 1st, p. 6, Master's Report and Resolution September 30th—Evi. Section 1, pp. 4-5.

(2) Because said phrase is not binding on the stockholders being simply an expression by the said Taylor of his opinion, and has no probative value as Evidence in determining the question whether the transaction between the two Banks was a loan or a sale.

"G."

Defendants except to the finding (g), page 62, as harmful error, wherein the Master states that:

"E. N. Lewis writes to the Comptroller General in a letter of August 19th, 1914, that the assets of the Commercial are now held by the American as security for all advances to be made and paid on liabili-
362 ties."

They aver that the Master erred in submitting it is a fact establishing a loan and should have found it showed the transaction to be a sale, for the following reasons:

(1) Because the phrase quoted from the letter does not, when read with the context, constitute a fact authorizing the Master to conclude that the transfer of the assets was made to secure a loan, but on the contrary, tends to show that the transaction was a sale. (See letter Master's Report, p. 145).

(2) Because said phrase was used by the said Lewis in the light of the resolutions which provided for liquidation of the Commercial by consolidating the same with the American by the latter's purchase of the assets.

(3) Because the phrase was only the opinion of E. N. Lewis as an individual and can have no probative value or effect.

(4) Because the said E. N. Lewis was not the Cashier of the Commercial National Bank at that time and was not authorized to bind its stockholders by any opinion he might express and they are not in any event bound by it.

"H."

Defendants except to finding (h), page 62, as harmful error, wherein the Master summarizes the letter of the Cashier of the American to the Comptroller in reply to a letter of the Comptroller, asking for a report of the assets and liabilities of the Commercial wherein occurs the stereotyped phrase:

"On August 1st, the Directors of the Commercial National Bank, by resolution transferred to this association as security for amounts advanced and to be advanced to pay the depositors, etc."

This statement is submitted by the Master as a fact, establishing the theory that the transfer of the assets thus made, constituted the transaction of a loan, and the defendants aver that the Master erred in so finding, and should have found outright that if considered at all, it established a sale for the following reasons:

(1) Because such expression on the part of the Cashier of the American Bank is a self serving declaration, made without the knowledge or ratification of the defendants, and has no probative value.

363 (2) Because the Master should have sustained the objection of the same and ruled it out, and erred in not so doing.

(3) Because the language of said letter if admissiblt does not establish or tend to establish a loan of the transaction in controversy, but when read as a whole, shows clearly that even the American Bank recognized the original transaction as a sale and purchase, which was to be followed by liquidation of the Commercial and its consolidation with the American. (See letter—Master's Report, p. 141) * * *

"K."

These defendants except to finding (k), page 64, as harmful error wherein the Master refers to a letter written by L. O. Benton of date October 9, 1914, to

Leon Dure, both being members of the stockholders' committee and quotes the following:

"For two reasons, it will be impossible for me to be in Macon on the date named * * *. Second, because I would not care to be a party to a meeting of this kind where it is proposed to turn over to the Central Trust Company of the assets of the Commercial."

They aver the Master erred in submitting this letter as a fact to be considered on the point in issue for the following reasons:

(1) Because it is not pertinent and does not illustrate the issue, and has no probative value.

(2) Because the fact that the writer did not wish to be a party to the settlement of the claim against the Central Trust cannot make the transaction a sale or a loan, and, therefore, it has no probative value.

(3) Because the use of words "any of the assets of the Commercial' is only a form of expressing the real fact that the stockholders had a residuary interest in the assets and the grammatical inaccuracy cannot give character to the transaction.

"L."

Defendants except to finding (L), page 64, as harmful error wherein the Master submits as a fact the clause in the contract in regard to preserving the statutory liability of the stockholders liabilities, and avers that he erred in holding that the same should be considered in determining whether the transaction was a sale or a loan, for the following reasons:

(1). Because the liability of the stockholders under the statute creating National Banks arises out of the Act, and does and can only exist by and under
364 the express terms of the act, and cannot be preserved, transferred or otherwise dealt with.

(2) Because whether it exists in the present case depends solely and exclusively on the fact that the American National Bank was and is a creditor of the Commercial National Bank, and become so at a time and under conditions when the Commercial National Bank was in a position to make a loan and create the relation on the contract, considered as a whole and not this specific clause.

"M."

Defendants except to finding (m), page 65, as harmful error wherein the Master submits as a fact to be considered in passing upon the question whether the transaction was a sale or loan the report of the stockholders' meeting published in the Press wherein W. T. Anderson is reported to have said:

"The assets over liabilities figure according to my recollection about $443,000.00, and that was the margin on which they, (The American National Bank) took it, backed by the additional liabilities of the Stockholders—"

and aver that he erred in holding that the statement should be considered for that purpose upon the following grounds:

(1) Because the report kept of said meeting, by Derry, was not admissable for the reason that Derry

was not an officer or employee of the Commercial, nor were the minutes ever approved or shown to be correct and should have been rejected by the Master.

(2) Because according to the evidence of W. T. Anderson, he never made the remark—"Backed by the additional liability of the stockholders". (See his evidence Section 4, page 111).

(3) Because the evidence shows that the published report of what was said at this meeting was not correct. (See Anderson's Evi., Sect. 4, pp. 111-112).

(4) Because the above statement of said Anderson in fairness should have been submitted in connection with the evidence of denial by him, in order that Court might understand the correct situation which this Press Report occupies in this record and give such weight thereto as it might deserve in view of Anderson's denial of the same, and the Master erred in not so doing, although he refers in said finding to Anderson's
365 Evidence on another issue but not on the identical statement submitted as a fact.

"N."

These defendants except to finding (n), page 65, as harmful error, wherein the Master refers to a letter written by Jno. F. Lewis to E. N. Lewis, from which he quotes as follows:

"Kindly attend to this promptly and oblige, because there may be an assessment of the stockholders of the Commercial National Bank."

These Defendants aver the Master erred in submitting this as a fact to be considered in determining the issue for the following reasons:

(1) Because this is simply the expression of an opinion by said Lewis, which cannot make the transaction either a sale or a loan; it is not based on any facts or any reason, and is of no probative value.

(2) Because these defendants are not bound by this opinion of the said Lewis, and it should not, for that reason, be considered.

"P."

These defendants except to find (p), page 66, as harmful error, wherein the Master refers to the request of L. O. Benton, that the Commercial National Bank on November, 1914, transfer Certificate of Stock No. 413 for 70 shares to Mrs. L. O. Benton, and certificate No. 306 for 28 shares of stock to L. O. Benton, Jr., and they aver that such a request could not illustrate the issue of sale or loan, and should not be considered for that purpose without regard to the language used in making the request, and the Master erred in so finding, but should have discarded it altogether.

No. XXXII.

These defendants object to finding 24, page 73, as harmful error, wherein he says:

"I find from the evidence that the amount of the indebtedness of the Commercial National Bank to the American National Bank, including interest at 7% on average daily balances, is the sum of $349,047.54."

These defendants aver the Master erred in finding that the Commercial National Bank was indebted to the American National Bank in any sum, but should have found that the said Commercial was not indebted to the American at all for the following reason:

Because all the evidence, written and oral, establish the facts that the transaction between said Banks involved in this controversy was a sale and not a
366 loan, and the relation of Creditor and Debtor does not exist between said Banks.

In support of this contention, these defendants cite the following testimony:

(1) The resolutions of the two banks August 1st, 1914, (See Master's Report, pp. 6, 7, 8 and 9).

(2) The notice to the stockholders of the Commercial calling the meeting of August 12th. (Master's Report, p. 9).

(3) The contract of August 11th, attached to the petition and especially the 2nd paragraph.

(4) The Resolution of the Board of the Directors of the American of August 13th copied in the exception to finding 24 of Master, wherein that Bank assumed circulation of Commercial.

(5) The letter of American's Cashier to the Comptroller of Currency, August 1, 1914. (See page 22, Master's Report).

(6) Notice to Stockholders of Commercial for meeting, September 30th, 1914, identical with that of Aug. 1st, for meeting of 12th of August.

(7) Letter of Cashier American National Bank to Depty. Comptroller Currency of date Oct. 1st, 1914. (See Master's Report, 140-1).

(8) Letter of Aug. 1, 1914, sent by the American to the Customer's of the Commercial Bank. Master's Rep., p. 24).

(9) Advertisements published in the Macon Telegraph of August 2nd and Macon Evening News of August 3rd, 1914, announcing the consolidation of the two Banks. (Master's Report, 25-26).

(10) Letter of E. N. Lewis to Comptroller August 3rd, 1914. (Master's Report, 23).

(11) Letter of President Taylor to the Comptroller, August 5th, 1914. (Master's Report, 136).

(12) Letter from Comptroller to Cashier of American, August 6th, 1914. (See Master's Report, 137).

(13) Letter of Cashier American to Comptroller, August 13, 1914. (Master's Report, 138).

(14) Evidence of E. Y. Mallary—(Sect. 4, pp. 129-131) showing that he understood the transaction not to be a loan and that Mr. Taylor knew he so understood it. "There was no question of any notes or security."

367 NO. XXXIII.

Defendants except to finding under head—"Issue No. 5," page 77, and aver the Master committed harmful error when he says:

"I find.....the amount for which the Shareholders of the Commercial National Bank will be liable is the sum of $327,304.70."

for the reason that the shareholders are not liable for any sum to the American National Bank, the evidence showing that the former Bank was not indebted to the latter, but that the latter purchased the assets of the former and the transaction was a sale and not a loan.

In support of this exception, defendants cite the testimony cited in support of Exception 32.

No. XXXIV.

Defendants except to finding of Master on page 81, wherein he says:

'I further find that in to pay off and satisfy the indebtedness of said Commercial National Bank, each of shareholders must be assessed the full amount of his stock at the par value thereof;"

and the Master committed harmful error in so finding for the reason that the evidence shows there is no indebtedness for which the Commercial National Bank is liable, and in support of this exception, defendants cite the testimony cited in support of Exception 32.

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XXXIV-A.

That the Master stated and certified under 28 on page 72 of his report, that

"Pursuant to the agreement made by the directors of the Commercial National Bank and the American

National Bank, and their officers, plaintiff took charge of all the assets of the Commercial National Bank, so transferred to it as security, on the 3d day of August, 1914, and from and after that date it paid in due course and as called upon all of the depositors of said Commercial National Bank, its bills payable and other liabilities.

"Thereafter, pursuant to the Articles of Agreement entered into between the Commercial National Bank and the American National Bank, dated August 11, 1914, plaintiff took charge of the assets of the said Commercial National Bank and proceeded to reduce the same to cash and apply the amounts received to reimburse itself for the amount which it had advanced in the payment of the liabilities of the said Commercial National Bank assumed and paid by it in pursuance of said articles of agreement."

In so finding the Master erred:

(1) Because said finding is not supported by the evidence.

(2) Because said finding is contrary to the evidence.

The Master should have found that, pursuant to the agreement, plaintiff took charge of all the assets of the Commercial so transferred to it as cash on the 1st day of August, 1914, and from and after that date it paid in due course the liabilities of the Commercial. Thereafter, pursuant to the articles of agreement entered into between the Commercial and the American dated August 11, 1914, plaintiff continued in charge of all of the assets of the Commercial, and proceeded to liquidate the

same, in order to realize the amount which had been already expended by it for the purchase of said assets, and which might thereafter be so expended, and to account to the shareholders of the Commercial for the overplus, if any.

For evidence supporting this contention reference is hereby made to evidence hereinbefore cited under Exceptions 20 and 86.

369 XXXV.

That the Master stated and certified under issue No. 2, at the top of page 73 of his report, that

"I find from the evidence that the amount of the indebtedness of the Commercial National Bank to the American National Bank, including interest at 7% on average daily balances, is the sum of Three Hundred and Forty-nine Thousand and Forty-seven Dollars and fifty-four cents ($349,047.54).

In so finding the Master erred:

(1) Because there is no evidence to support such finding.

(2) Because such finding is contrary to evidence.

The Master should have found that the amount of the deficit on liquidation of the assets of the Commercial was $359047.54.

And Defendants specially except to the expression "indebtedness of the Commercial National Bank to the

American National Bank," as used by the Master in this and the other portion of his finding in Issue No. 2, and state that the Master should have used the expression "deficit arising from realization upon Commercial's assets and payment of its liabilities as administered by the American."

In support of this exception, defendants cite the evidence heretofore cited under Exceptions II, III, VI, XIII and XVII.

Mr. Creed Taylor testified, on page 182 of Section 1 of the record, that the method of keeping the records which were put into effect by the American on and after August 3, 1914, in handling the affairs of the Commercial National Bank, was such as would have been necessary in a plan in which the American had purchased the assets of the Commercial, but with an obligation to administer or liquidate those assets and account to the shareholders for any overplus of assets, or liabilities.

See, also, bottom of page 186, and top of page 187, of Mr. Taylor's testimony in the same Section. Again on page 200 this witness asserts that if the American bought the assets of the Commercial, agreeing to pay the liabilities of the Commercial, to administer the affairs of the Commercial, and to turn over to the
370 Commercial shareholders the overplus, that the system of keeping accounts that this expert account found were being kept on and after August 3, 1914, would have been substantially necessary.

"At the bottom of page 24, Section 3, and top of page 25, R. C. Souder testified that in the administration of the assets of the Commercial with said obligation on the part of the person conducting the administration to ac-

count for an overplus, after deducting the expenses of the administration, it would be altogether proper to keep the expenses of the administration by vouchers or checks. He further testified at page 25 that the proper way to evidence such an expense charge would be by a check or voucher drawn or O.K'd. by those having charge of the liquidation."

"At page 31, witness Souder testified that in administering the affairs of the Commercial, with an obligation at the end of the administration to account for the excess of assets over liabilities, regardless of the object or nature of the transaction between the two banks, substantially the same records would have had to be kept as were kept."

"At page 54, Section 3, witness Scott testified that the method of bookkeeping adopted was necessary in connection with liquidation or administration, in view of the obligation of the American to pay the expenses of the administration and to pay the overplus to the shareholders of the Commercial."

"At page 12, Section 4, Mr. Mallary testified that he had nothing whatever to do with the manner in which the record was kept, or the handling of the money, or with any part of the business conducted at the American.

"At page 65, Section 4, Mr. Dure testified that if the contract was one of sale by the Commercial of its assets to the American with an obligation on the American to account for any overplus of assets over liabilities, after deducting expenses, it would have been necessary to keep the accounts as the evidence shows the accounts were kept by the American, or to have adopted some other system that was the equivalent. He testified that he did not know of any simpler plan than the one that was adopted, in view of the kind of trade referred to.

"At the bottom of page 176, and top of page 177, Section 4, Mr. DeBorde testified that if the American purchased the assets of the Commercial, with the incidental duty of liquidating those assets, and the obligation to pay the overplus to shareholders of the Commercial, it would have been necessary to keep such records as were actually kept, in order to keep a record of the transaction.

"At page 181, Mr. DeBorde testified that in order to keep the accounting straight, in view of the obligation to pay over the excess, it was necessary to keep a recapitulation of the various transactions on some such book as the statement book, which has been
371 referred to in the evidence. He explained that the daily checks and vouchers signed by Mr. Lewis saved trouble and time in keeping track of the progress of liquidation.

"At page 182 he testified that it was necessary to keep substantially such records as were kept, in order to determine what amounts ultimately to pay over to the shareholders. The same effect is his testimony at the bottom of page 183.

At page 21, Part 7, Mr. Scott breaks loose with the method of accounting and the carrying of the balance as an overdraft. He admits that it was done as a matter of convenience.

"At the bottom of page 52 and top of page 53, Section 7, Mr. Hillyer admits that if the American bought the assets of the Commercial under a plan of practical consolidation with the object to liquidate the assets and to account for any overplus, it was necessary to keep these same accounts accurately, instead of just throwing them in bulk into the American.

## XXXVI.

That the Master stated and certified under Issue 5, on page 77 of his said report, that

"I find that after applying to the indebtedness of the Commercial National Bank, to-wit, $349,047.54, the value of the assets remaining on hand, to-wit, $21,842.84, the amount for which the shareholders of the Commercial National Bank will be liable, is the sum of Three Hundred and Twenty-seven Thousand Two Hundred and Four Dollars and seventy cents ($327,204.70)."

In so finding the Master erred:

(1) Because there is no evidence to sustain such a finding.

(2) Because such finding is contrary to the evidence.

The Master should have found that after applying the value of the assets remaining on hand, to-wit $21,842.84, to the deficit arising from excess of agreed purchase price over realization on assets, there remained a deficit of $327,204.70, and that had this deficit been an indebtedness of the Commercial National Bank to the American the shareholders of the Commercial would be liable in this sum; but that, as the transaction between the two banks was a sale of assets, and as there was no loan to the Commercial, or indebtedness arising in any other way, this deficit is a loss which must be borne by the American by reason of its agreement based upon the judgment and opinion of its officers as to the value of the Commercial's assets.

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In support of this exception, defendants cite the evidence cited under Exception XXXV and XXIV herein, and the evidence there cited.

XXXVII.

That the Master, in his said report under Issue No. 6. and on page 81, stated and certified that

"I further find that in order to pay off and satisfy the indebtedness of said Commercial National Bank each of its shareholders must be assessed the full amount of the stock at the par value thereof."

In so finding the Master erred:

(1) Because there is no evidence to sustain such finding.

(2) Because such finding is contrary to the evidence.

(3) Because such finding is contrary to the law of the case.

The Master should have found that, had this deficit of the Commercial been an indebtedness, each of the shareholders of the Commercial should have been assessed the full amount of the stock at the par value thereof; but, as there was no indebtedness of the Commercial to the American, there is, accordingly, no liability on the part of the Commercial shareholders, and, therefore, unnecessary that any assessment be made.

In support of this exception, defendants cite the evidence heretofore cited under Exception XXXV and XXIV, and the evidence there cited.

## XXXVIII.

That the Master stated and certified, in effect on page 88 of his said report, that

"The resolution of the American of August 1st was the offer, and the resolution of the Commercial, the acceptance."

In so finding the Master erred:

(1) Because such conclusion is not supported by the evidence.

373 (2) Because it is contrary to the evidence.

(3) Because such conclusion is contrary to the plain intent of the resolutions of both banks, and contrary to the evidence as to prior negotiations between Taylor and Mallary which led up to and induced the contract.

The Master should have found that, regardless of the hour on August 1st, when the two resolutions were passed, that the resolution of the Commercial was an offer, and the resolution of the American the conditional acceptance. The conditions of this acceptance were as shown in the resolution of the American, all of which were complied with save and except the condition relative to the other banks of Macon's Clearing House. All of the assets of the Commercial having been transferred to the American, and not as security for the note of the Commercial, these assets were transferred as cash, and the American took them as purchaser.

For evidence supporting this exception, defendants cite the evidence heretofore cited under Exception 3

(III), showing that the officers of the Commercial had previously stated to officers of the American the conditions on which they would consent to a consolidation of the two banks, and more particularly the evidence of Mr. Mallary in Section 4, on pages 6 and 7.

As to the fact that no note was given, defendants cite the following:

Section 4, page 12, Mr. Mallary testified that he had nothing whatever to do with the manner in which the record was kept or the handling of the money or with any part of the business conducted at the American.

Section 4, pages 109-110, Mr. Anderson testified:

That in the negotiations on Friday night, July 31, and subsequent negotiations, that it was never in contemplation that the Commercial should give notes to the American, and that there was never any mention of notes so far as he knew.

Section 4, pages 127-128, Mr. Anderson testified:

374 That there never was any contemplation of notes, and that throughout all of the transactions, interviews and conversations he had never heard any mention of notes.

Section 4, page 129, Mr. Mallary testified:

That he, as President of the Commercial, conducted the negotiations and made the trade between the two banks; that he understood the assets were taken as cash, and there was no question of any notes or secur-

ity; and at the top of page 130 he testified that there was absolutely no question about any loan.

Section 7, page 31, Mr. Scott testified, showing the futility of claiming that a note could not have been given as easily as a voucher or check.

Section 7, page 42, Mr. Hillery testified that the first mention of the notes, the discussion being then confined to the officers and attorneys of the American. This was several days after the Commercial went out of business.

Section 7, page 52, Mr. Hillyer testified that the American's register of collaterals was supposed to carry all the collateral that the bank had. Mr. Scott had previously testified that the assets of the Commercial were not placed on that register.

Section 7, page 44, Mr. Hillyer testified that he began to take a new view of the Commercial's assets after the American had taken over the Commercial, and it was after this new view that he wished certain features arranged, he suggesting to his counsel the matter of taking notes.

Section 8, page 14, an effort is made by Mr. Park to have Mr. Taylor state what the trade was. "Well, Mr. Park, there was no understanding up to the time of our directors meeting, as I recollect." (See bottom of page 71, top of page 72).

He testified that it was his recollection that he had no understanding after that. When asked what the understanding was, stated that he could not positively state but he thought the contract or resolutions were drawn that night.

Section 8, page 15, Mr. Taylor, when asked the direct question whether there was any discussion between the officers of the American and the officers of the Commercial with regard to notes to be given by the Commercial, answered: "Well, it was my understanding that the matter would be closed up by notes." When asked whether Mr. Taylor remembered if the matter of notes was discussed with Mr. Lewis, he answered: "No, sir, I don't remember that."

Section 8, page 45, Mr. Taylor testified that he could not state positively that he saw or talked with Mr. Cobb, or any other officer of the Commercial Bank with regard to this trade.

See, also, finding of the Master in next to the last paragraph on page 109 of his said report.

375 See, also, resolution of American, Master's Report page 6, and resolution of Commercial, Master's Report page 7 & 8.

## XXXIX.

That the Master found, stated and certified at page 85 of his report as follows:

"Under the resolution of the American of August 1, 1914, that bank in offering to assume the liabilities of the Commercial described in a certain list furnished by the Commercial, excepted its circulating notes, but some time prior to the execution of the contract of August 11 had agreed to assume these notes, and their assumption by the American was duly authorized at a later meeting of its directors."

In so finding the master erred, and said error was prejudicial, is prejudicial and harmful to the defendants:

(1) Because said finding is not supported by evidence.

(2) Because said finding is contrary to the evidence.

The Master should have found that the original and proper purpose of the American between the American and Commercial was to effect a practical consolidation of the two banks, the Commercial to be absorbed by the American, the American to take over the entire business of the Commercial, the American to administer the assets of the Commercial and to assume to pay and actually pay all of the liabilities of the Commercial, the American to pay over to the shareholders of the Commercial the excess of assets over liabilities, as determined by an administration or liquidation of the assets of the Commercial.

The Master should have found that it was the purpose of the American of August 1, 1914, that the Commercial should transfer to the American, as of August 1. 1914, at the close of business, all the assets of the Commercial of every kind and character, including the bonds on deposit with the Treasurer of the
376 United States to secure the circulation of the Commercial.

The Master erred in finding that there was, in the resolution of the directors of the American of August 1, 1914, any express exception of the bonds deposited to secure the circulation. The evidence, including list of liabilities attached to the contract, clearly indicates that the American fully knew what were the obligations of

the Commercial as to circulating notes, and knew the amount and value of the bonds deposited with the Treasurer of the United States. It was well understood, therefore, that in listing the liabilities to be assumed by the American National Bank it was not necessary to include the circulating notes of the Commercial. The Master should have found that this was the full meaning of the notation in the Exhibit attached to the contract in the following words, "Total (not including circulation)."

In support of this exception, reference is made to the 3d and 4th paragraphs of plaintiff's petition.

The Master should have found that while the formal transfer of the bonds which the Commercial had deposited with the Treasurer of the United States was not made until a later date it was, nevertheless, the intention of the parties that the title to these bonds, subject to the obligations of the American to account for an overplus, should pass to the American as of August 1, 1914.

This fact is definitely shown in the minutes of the directors of the American the 12-13 of August, 1914; the minutes of the committee of shareholders of the Commercial of August 12-13, 1914; and the definite price at which the American should take said bonds, towit, the market price in New York City on August 1, 1914. See Record, Section 1, page 51.

377 XL.

That the Master stated, concluded and certified, as shown on page 86 of his report, in his interpretation of the decision of the Circuit Court of Appeals in this case, that

"The Court does not hold that the provisions of the contract referred to as 'giving some color' to the defendant's contention; considered in connection with the 'other provisions just recited, did not have the effect of making the American a creditor of the Commercial. Nor does the Court, as I read the opinion, in terms hold that the langauge of the contract is ambiguous."

The Master erred in this interpretation of the meaning of the decision of the Circuit Court of Appeals. The opinion and decision of that Court shows clearly that the Court did not hold and did not intend to hold that separately and apart from the material averments of the bill as amended the written evidence, embracing the contract, the resolutions of the directors of the two banks and the resolutions of the shareholders of the Commercial, indicate an unambiguous contract creating the relationship of creditor and debtor. On the contrary, the Court, by way of conclusion, assumed and conceded that the language of the writings failed to show an unambiguous contract; and the decision of the Court clearly shows that but for the amendment to the bill setting up agreements and interpretations by the parties during the period it was alleged the Commercial was doing an active banking business the judgment of the trial Court dismissing the bill would have been sustained by reason of the fact that there was not presented by the plaintiff an unambiguous agreement establishing the relationship of debtor and creditor.

XLI.

That the Master found, reported and concluded, as shown on page 90 of his report, that

"The contract of August 11, 1914, undertakes to recite the action taken by the directors on August 1. In Paragraph 2 of the contract, the Commercial agrees
to procure a resolution of its shareholders 'rati-
378 fying and confirming the action of the Board
of Directors of said Commercial National Bank as herein recited.' The action, as recited in the preamble, is that on August 1, 1914, the bank transferred and assigned all of its assets to the American bank in order to fully protect and secure said bank for all moneys advanced or to be advanced by said bank."

In this finding the Master erred:

(1) Because the Master does not set forth the true meaning and purpose of the contract, and does not truly and fully set forth the meaning of the words "as herein recited."

The Master should have found that, as shown at the forefront of the resolution of the Board of Directors of the Commercial of August 1, 1914, there is a recital of the principal purpose of the action of the directors and of the contract and of the ratification by the shareholders, the recital here referred to being the opening words of the first preamble to the contract, as follows:

"Whereas, on the 1 day of August, 1914, the Board of Directors of the Commercial National Bank, at a meeting of said Board duly and regularly called, adopted a resolution which authorized the officers of said Association to commence proceedings for the liquidation of said Association under Section 5220 and Section 5223 of the U. S. Revised Statutes for a consolidation with the said American National Bank, etc."

And the Master should have further found that the sole objects and purposes of the meeting of the shareholders of August 12, 1914, and of September 30, 1914, at which meetings the contract was ratified and approved was to consider "the consolidation of this bank (the Commercial) with the American National Bank of Macon, Georgia, by sale of its assets to the said American National Bank and the assumption of its liabilities in taking over its business by said bank, including the liquidation of said bank under Sections 5220-5223 of the U. S. Revised Statutes."

379 And the Master should have found that the two meetings of the shareholders, August 12, 1914, and September 30, 1914, were specially called meetings, and that the only business which could legally and properly be submitted to said meetings was a plan or agreement for said consolidation and liquidation, and that only that business was presented to said meetings and passed on at said meetings.

XLII.

That the Master stated, found and certified, as shown on page 93 of his report, that

"Taylor was to take up the matter with the Board of Directors of the American. The matter he was to take up was upon what terms the American would advance or loan to the Commercial sufficient moneys to enable it to pay its liabilities in advance of realizing upon its own assets, the amount of the loan at any given time being equivalent to the amount paid out by the Commercial upon its liabilities less the amount realized by it over its assets and paid on the liabilities."

In so finding the Master erred, said error being prejudicial and harmful to the defendant.

(1) Because there is no evidence to support said finding.

(2) Because said finding is contrary to the evidence in the case.

The Master should have found that there was nothing in the interview between R. J. Taylor, president of the American, on the one side, and E. Y. Mallary, president of the Commercial, and J. J. Cobb, vice president, on the other, to indicate that Mr. Taylor was to take up with his Board of Directors the matter of terms on which the American would advance or lend to the Commercial sufficient moneys to pay its liabilities. The Master should have found, as testified by Mr. R. J. Taylor, that the specific loan of $25,000 was the last loan transaction negotiated between Taylor and Mallary and was the last loan made or intended to be made by the American to the Commercial.

The Master should have found, as testified
380 by E. Y. Mallary, that as a result of the interview had by him with Mr. R. J. Taylor on the night of July 30, as well as by reason of the previous negotiations between them, the purpose of the agreement and transaction of August 1, 1914, as reflected in the resolutions of the Boards of Directors and eventuating in the contract, was the practical consolidation of the two banks, accomplished through the sale by the Commercial of its assets to the American and incidental liquidation of the affairs of the Commercial, and the obligation on the part of the American to pay to the Commercial shareholders any overplus realized.

The finding of the Master above set forth is not supported even by the testimony of R. J. Taylor which is, in the aspect most favorable to the Master's finding, incorporated in the report, pages 123-125, inclusive.

In this connection, the Master should have concluded and found, as admitted by Mr. Taylor in his testimony, that he had no definite or reliable recollection of the transactions which occurred prior to August 1, 1914, and immediately thereafter.

In this connection, reference is made to the testimony of Mr. Taylor, Section 8, page 4, of the reported evidence, to the effect that Mr. Mallary, in the summer of 1914, discussed with him the possible consolidation of the two banks, and that this matter was discussed on a second visit of Mr. Mallary and Mr. Cobb to Mr. Taylor's house, and this was one of the subjects matter of discussion between Mr. Taylor and Mallary and Cobb on a visit made by Mallary and Cobb after the Jelks loan was made. He further testified that this occurred, as he recollected, the night before he went through the affairs of the Commercial National Bank, to-wit, on July 30, 1914.

Again, in Section 5 of page 8, Mr. Taylor
381 asserts that the matter of consolidation was discussed at the meeting of July 30, 1914.

As shown on pages 6 and 7 of Section 8 of the testimony, Mr. Taylor expressed his opinion or conclusion that the purpose of his going through the affairs of the Commercial was to see if the American could give any further help; Mr. Taylor was entirely unable, however, to show that such was Mr. Mallary's purpose, or to give any part of the conversation between him and Mr. Mallary indicating that the purpose testified to by Mr. Taylor was a logical conclusion.

As shown at page 7 in Section 8 of the testimony, Mr. Taylor could not recall whether he saw Mr. Mallary or Mr. Cobb on August 1, 1914. In connection with this statement of Mr. Taylor, as the Master should have found, his recollection of the transaction is entirely unsatisfactory in view of his testimony on page 14 of Section 8 of the evidence that there was no understanding up to the time of the director's meeting that he recollected; that he had his understanding after that. Upon being asked the question, "What understanding did you come to?" he answered, "I can not state positively what was said, but I think the contract was drawn that night or Saturday night." Thereupon Mr. Taylor was corrected by his counsel, the counsel using the form of question for this correction, as follows: "No, sir, the resolutions were." Mr. Taylor then said, "Well, may be it was the resolution." By way of further correction, plaintiff's counsel then stated, interrogatively, "The contract was signed eight days afterwards?" and thereupon Mr. Taylor replied, "That's right."

382 The Master should, therefore, have found that Mr. Taylor had no understanding or could not recall any understanding or purpose or intent arrived at up to the time of the director's meeting; that he had an understanding after that; and that he could not tell what that understanding was and did not remember that he again had an interview or conference with Mallary, Cobb or any other officer of the Commercial.

The Master should have found that the testimony of E. Y. Mallary as to the purpose of the agreement, as corroborated by the other evidence in the case, was to be preferred to the uncertain and indefinite testimony, in the shape of a conclusion, entertained by Mr. R. J. Taylor.

In further support of this exception, reference is made to the evidence cited and referred to in Exceptions 2 and 3.

## XLIII.

That the Master found and certified, as shown by page 94 of the report, that

"The answer of the American to the request of the Commercial for a loan of money, for the purposes stated. is contained, etc."

In so finding the Master erred, the error being prejudicial and harmful to the defendant:

(1) Because there is no evidence to support said finding.

(2) Because said finding is contrary to the evidence.

The Master should not have found that the Commercial made application for a loan of money, but the Master should have found that the proposal and the acceptance contemplated a practical consolidation of the two banks by a purchase on the part of the American of the assets of the Commercial, the assumption by the American of the liabilities of the Commercial, and an obligation on the part of the American to pay to the shareholders of the Commercial the excess of assets over liabilities.

383 In support of this exception, reference is made to the evidence cited and referred to in Exceptions III, II and XLII.

XLIV

That the Master found and certified, as shown by page 95 of his report, that

"It will be at once noted that the American does not offer to accept all the assets, that is, as an entirety, as cash. It expressly limits the amount it will accept to an amount which, in the estimation of its officers, will be sufficient to protect and secure it for all amounts so assumed."

In so finding the Master erred, the error being prejudicial to the defendants.

(1) Because the finding and conclusion above set forth is not a proper interpretation of the resolutions of the directors of the American, either standing along or as illustrated by the other evidence in the case.

The Master should have found from the resolutions of the Board of Directors of the American of August 1, 1914, unaided, and from said resolutions as interpreted by the other writings and facts shown by the evidence, that when consolidation of the two banks was proposed and taken under consideration, under a plan whereby the American purchased the assets and business of the Commercial, assuming the liabilities of the Commercial and agreeing to pay to the shareholders of the Commercial any excess of the assets over liabilities, the willingness of the American so to do was conditioned upon an examination and appraisal of the Commercial's assets by the officers of the American, and that in the event these assets were sufficient in amount and value to make the American safe in its venture and under-

taking and the officers of the American were authorized to make the agreement of purchase and consolidation. The Master should have found that the purpose of measuring and estimating the assets was not a matter left to the future, but had been accomplished on the
384 night of July 31, 1914, and that the American made the contract hereinbefore referred to upon the judgment of its officers.

XLV.

That the Master found and certified, as shown on pages 95 and 96 of his report, that

"Without discussing the significance of the method of accounting employed, it may be remarked at this time that if all the assets had been taken over as cash by the American, under that method of bookkeeping the initial entry on the American's account in the Commercial's ledger would have been an overdraft of $1,100.000.-00 against the American, and the overdrafts would have continued on the Commercial's books instead of on the American's."

In this finding the Master erred, which error was prejudicial and harmful to the defendants:

(1) Because there is no evidence to support said finding.

(2) Because said finding is contrary to the evidence.

The Master should have found, as testified by all the witnesses in the case who professed to have any knowledge of book-keeping or accounting, that the method

of keeping the accounts after August 3, 1914, in its entirety, was such method as would have been necessary in the event the contract between the two banks had been as defendants insist that it was, to-wit, a practical consolidation of the two banks, brought about by a purchase on the part of the American of the assets of the Commercial, the assumption by the American of the liabilities of the Commercial, and the payment to the shareholders of the Commercial of the difference in value between the assets and liabilities of the Commercial, that difference to be determined by actual liquidation or administration under the direction of the American rather than by a definite estimate of its officers on August 1, 1914.

385 XLVI.

That the Master found, certified and concluded, as shown at page 93 of his report, that

"Voluntary liquidation was considered absolutely necessary. Liquidation de jure could not begin until determined upon by the formal action of stockholders. In the meantime the bank would be in a de facto state of liquidation."

In so finding, in the manner in which the finding is reported and in the limited form thereof, the Master erred, the error being prejudicial to defendants,

(1) Because said finding is restricted and limited to the harm and hurt of defendants.

(2) Because this limited and restricted finding is contrary to the evidence.

The Master should have found that voluntary liquidation was considered absolutely necessary, by reason of the fact that in the purchase by the American of the asset of the Commercial, effecting a practical consolidation, the officers of the American did not wish on August 1, 1914, to appraise definitely and specifically the value of the Commercial's assets, and pay to the shareholders of the Commercial the excess of the assets over liabilities, preferring to have such excess which was confidently expected by both the officers of the American and the officers of the Commercial, determined by a liquidation of the affairs of the Commercial under the control and direction of the American National Bank, first as liquidating agent de facto, and by agreement, and afterwards as liquidating agent de jure.

Reference is made to the resolutions of Boards of Directors of the two banks of August 1, 1914, the contract, the notice sent to shareholders of the Commercial National Bank as to the object of the meeting of August 12, 1914, as shown on page 9 of the Master's report;

386 the printed advertisement of August 1, 1914, shown in the Master's Report, page 25, 26, and shown by the resolution of the stockholders of the Commercial on August 12, 1914, at which time the shareholders of the Commercial formally ratified the de facto liquidation which had been in progress under the American National Bank as liquidating agent since August 1, 1914, that resolution which definitely provided for voluntary liquidation making the reference "to take effect at the close of business on August 1, 1914," and "appointing the American National Bank the liquidating agent."

XLVII.

That the Master found, stated and certified, at the bottom of page 93, and top of page 94, of his report, that

"While this was true, Taylor was in a position to dictate the terms upon which he would lend the Commercial the money necessary to meet its liabilities in advance of realizing upon its assets. Since the liquidation of the Commercial was necessary, Mr. Taylor saw an opportunity to further enhance the pre-eminence of the American Bank by having it in some way absorb as far as possible the deposits and patronage of the Commercial. It is also true that if he made large advances to the Commercial, he would expect to have some control over the liquidation of its assets."

In so finding, the Master erred, the error being prejudicial to the defendants.

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

Defendants contend that the Master should have found, if he desired to make finding with reference to the power of R. J. Taylor, President of the American, that the opportunity of compelling any arrangement or contract desired by the American, whether acceptable to the officers of the Commercial or not, and whether, in accordance with the negotiations between Taylor and Mallary, or not, and whether in accordance with the resolutions of the Boards of Directors or not, was at a

time after the assets of the Commercial National Bank and its business had been taken by the American.

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The Master should have found that the transaction reflected by the resolutions of Boards of Directors of August 1, 1914, and memoralized in the contract, was not one by which Taylor, for the American loaned or agreed to loan any sums of money to the Commercial.

And the Master should have found not only that Mr. Taylor would expect to have some control over the liquidation of the Commercial's assets, but that the original agreement provided and contemplated that the American should have absolute control over these assets immediately at the close of business of August 1, 1914, and should have found further that the American assumed charge and control of those assets on and after August 3, 1914.

See evidence set out in Exceptions III, X, XX, and XXXV.

## XLVIII.

That the Master found and certified, as shown on page 94 of his report, that

"The first condition upon which it (the American) is willing to assume the liabilities and pay them as presented for payment is, that the Commercial agreed to transfer to it as cash—cash, cash items, bills receivable, etc., sufficient in amount and in value in the estimation of the officers of this association (the American) to fully protect and secure this association for any and all amounts so assumed."

In so finding the Master erred, the error being prejudicial to defendants.

(1) Because there is no record evidence to support such finding.

(2) Because in said finding the Master misinterpreted the meaning and effect of the evidence.

(3) Because said conclusion and finding is not authorized by the pleadings in the case.

388 The Master here and at other places to which the attention of the Court will be called, erroneously interpreted the resolution of the Board of Directors of the American dated August 1, 1914, as providing and contemplating that only so much of the assets of the Commercial should be transferred to the American as would be sufficient in amount and value in the estimation of the officers of the American to fully protect and secure the American for any and all amounts assumed by it.

The Master should have found, as is the plain import of the resolution and of the agreement evidenced by the resolutions of the American Directors and those of the Commercial's Directors of August 1, 1914, and as plainly and distinctly averred in the plaintiff's petition, paragraphs 3 and 4, that the only contemplation in the minds of the parties, or either of them, was on August 1, 1914, all the assets of the Commercial, of every kind and character, were transferred to the American.

No part of the plaintiff's petition, in its original form, nor in its amended form, contains any hint that the parties did not intend that all the assets of the Commercial should be transferred to the American on August 1, 1914, nor is there any dispute between plaintiff and defendants upon the question whether on that date all the Commercial's assets were actually trans-

ferred. The difference between the parties litigant, as shown by the pleadings, is as to the purpose of this entire transfer.

The Master erred in his finding, as well as in other related findings in adopting and reaching a conclusion which is not justified by the evidence, or by the contentions of either of the parties litigant before the Court.

XLIX.

The Master found, stated and certified as shown at page 95 of his report, that

389 "It was intended that the assets of the Commercial should be reduced to cash as rapidly as possible and applied on the liabilities of the Commercial as fast as possible. The American was to advance the deficit, that is the amount in addition to the amount realized from assets, which it was necessary to pay out on liabilities when and as they were presented for payment."

In this finding the Master erred, the error being prejudicial to the defendants.

(1) Because there is no evidence to support said finding.

(2) Because said finding is contrary to the evidence.

The Master should have found that the obligation of the American was to pay the liabilities of the Commercial independently of any realization upon the assets of the Commercial, and that the obligation of the American was not as to any deficit between the matur-

ing liabilities of the Commercial and the realization upon the Commercial's assets.

Defendants contend that this is a plain and clear import of the meaning of the resolutions of Boards of Directors of the two banks of August 1, 1914, and of the contract.

See evidence under Exceptions III, XX and XXV.

L.

That the Master stated, found and certified, as shown at page 95 of his report, that

"This deficit, representing the amounts of money advanced to the Commercial, is the loan which the American insisted on being paid or secured."

In so finding the Master erred, the error being prejudicial to defendants.

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

(3) Because said finding is not justified by any of the pleadings in the case.

390 Defendants contend that the theory of the plaintiff definitely set forth in its amended petition, is that all the assets of the Commercial were transferred to the American on August 1, 1914, to secure not a deficit between the amounts of money paid out by the American, and the amounts of money realized upon the Commercial's assets, but to secure the gross

amounts which the American would be called on to pay, and which, according to plaintiff's expressed contention, were intended to be evidenced by notes.

Defendants contend that there is no evidence limiting the nature and scope of the transaction between the two banks to a deficit which might exist by reason of excess of liabilities of the Commercial over the realization upon its assets.

Both parties have contended that whatever the nature of the transaction embraced within its scope the entire subject of assets and liabilities, and was not limited to such deficit.

The Master should not have found that the deficit referred to, or any amount paid out by the American in advance of its realization upon the assets of the Commercial, was a loan, but should have found that the amounts of money so paid constituted the agreed purchase price to be paid by the American for the assets and business of the Commercial, the American also assuming the obligation to return to the shareholders of the Commercial the excess of assets over liabilities.

See evidence under III, X, XX, XXIV, XXXV, XXXVIII, LXXXVI.

LI.

That the Master found, stated and certified, as shown at page 95 of his report, that

"The American was willing to have this overdraft paid by a transfer of a sufficent amount of assets as cash, that is as money, or as referred to in the next condition, have it evidenced by note of the Commercial secured by the transfer of sufficient assets."

391 In this finding and interpretation, the Master erred, the error being prejudicial to defendants.

(1) Because said finding is not supported by the evidence.

(2) Because said finding is contrary to the evidence.

(3) Because said finding is not authorized by the pleadings in the case.

In support of this exception, reference is made to Exception XLVIII, and the evidence therein referred to and cited.

LII.

That the Master stated, certified and concluded, as shown at page 96 of his report, that

"The second condition upon which the American is willing to assume the liabilities, is that the Commercial transfer to it as collateral for its notes,—cash, cash items, etc, sufficient in amount and value as aforesaid to secure the American for any and all amounts so assumed."

In this finding, interpretation and conclusion, the Master erred, the error being prejudicial to defendants.

(1) Because there is no evidence to support the finding or interpretation.

(2) Because the finding is contrary to the evidence.

(3) Because said finding is not authorized by the pleadings in the case.

The defendants contend that the Master should have found that if the assets of the Commercial were transferred as security, it was intended that all assets should be transferred and that notes should be given for the gross amount of the American's advances.

The Master should have found that the words "sufficient in amount and value as aforesaid", did not present a limitation upon the amount or quantity of assets to be transferred, but expressed the condition upon which the American would accept the transfer of all
392 the assets of the Commercial on August 1, 1914, to-wit: that its officers should be satisfied that all said assets would constitute full protection to the American.

## LIII.

The Master found, stated and certified, as shown at page 96 of his report, that

"I think the conclusion followed that the American did not offer to accept all the assets, as an entirety, and at the time of the transfer, as cash."

In so finding and concluding the Master erred, the error being prejudicial to defendants:

(1) Because said finding is without evidence to support it.

(2) Because said finding is contrary to the evidence.

(3) Because said finding is not authorized by the pleadings in the case.

Defendants contend that the Master should have found, as plainly asserted in the third paragraph of the petition, that under a resolution of the Board of Directors of the Commercial National Bank on August 1, 1914, the Commercial National Bank "transferred, assigned and conveyed to plaintiff all of its assets of every kind and character, including its cash on hand, bills receivable, stocks, bonds, and securities, its banking house and other real estate, and all other assets."

Defendants contend that it necessarily follows, under the pleadings in this case, that if all the assets of the Commercial were on August 1, 1914, transferred to the American, and if, as shown by paragraph four of plaintiff's petition, the American "took charge of all said assets so transferred to it on the 3rd day of August, 1914," and if it be true as found by the Master and shown in the sentence next succeeding the finding herein criticised, that the American did not exact that the Commercial transfer to it as collateral all its assets, then the conclusion is irresistible that the Master erred in finding that all said assets were not transferred to the American as cash.

393

Defendants contend that the Master should have found that all said assets were transferred to the American as cash, in pursuance of an agreement of purchase and practical consolidation, with the obligation on the American to pay the liabilities of the Commercial, incidentally liquidating the affairs of the Commercial, and the American assuming the further obligation to account to the Commercial shareholders for the excess of assets over liabilities.

LIV.

That the Master stated, certified and found, as shown at page 97 of his report, that

"Under the first two conditions, the assets of the Commercial would from time to time have been transferred by it as cash or as security, under the third the assets would have been reduced to cash and applied in reduction of the Commercial's liability."

In so finding the Master erred, the error being prejudicial to the defendants:

(1) Because said finding is not supported by the evidence.

(2) Because said finding is contrary to the evidence.

(3) Because said finding is not authorzied by any of the pleadings in the case.

The Master should have found, that the contemplation and purpose of the parties was that all the assets of the Commercial should be transferred to the American on August 1, 1914, and were actually transferred on said date, and that the American took charge of all said assets on August 3, 1914, and continued in charge of the same thereafter.

Defendants contend that the plaintiff so admitted and charged in the third paragraph of the petition, and in so far as the plaintiff can be bound, the plaintiff is bound by the allegations and averments made
394 in said paragraph. The Master should have so found.

Defendants contend that the Master should not have found that any plan or agreement was evolved or reached under the blanket provision of the resolution of the Didectors of the American of August 1, 1914, in the following words: "or shall otherwise satisfactorily secure this association for all amounts paid or assumed", for that no part of plaintiff's case, as set forth and charged by the plaintiff, is based upon said provision but is predicated solely upon the theory that all the assets of the Commercial were transferred to the American on August 1, 1914, and that the American took charge of all said assets on August 3, 1914.

Further reference is made to the epitome of the resolution of the American Directors, August 1, 1914, as contained in the contract, in which epitome the blanket authority referred to is noticeably and conspicuously missing.

The agreement as interpreted by the plaintiff in the drawing of the Contract of August 11, 1914 (that contract having been drawn by George S. Jones, Esq., and O. A. Park, Esq., attorneys for the plaintiff), in which the resolution of the American Directors is epitomized, and further interpreted in the petition upon which plaintiff's claim to recover rests, was that all assets of the Commercial should be transferred to the American on August 1, 1914, and the Master was without authority or justification in concluding that the plaintiff is entitled to recover of defendants, and basing that finding upon any theory other than the interpretation of the plaintiff as shown in the averments of the petition.

LV.

That the Master stated and certified on bottom of page 94, and pages 95, 96 and 97 of his said report, in effect,

That the assets of the Commercial were not
395 transferred to the American either as cash or as collateral for loans, but that there was a compliance of the third condition mentioned in the American's resolution of August 1st, to-wit: The American is willing that the Commercial shall otherwise satisfactorily secure it for any and all amounts so assumed, and in the last paragraph on page 97;

Under the third (condition) the assets would have been reduced to cash and applied in reduction of the Commercial's liabilities. In the liquidation of the bank a time would come when all of its assets were exhausted. If they had been insufficient to pay all its liabilities, the deficit, representing the net amount advanced by the American throughout the liquidation would seem to be a debt due by the Commercial.

In so finding the Master erred, the error being prejudicial to defendants:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the other findings.

(3) Because such finding is contrary to the evidence.

(4) Because the finding and conclusion is not justified by the pleadings in the case.

The Master should have found that all of the assets of the Commercial were transferred to the American as cash under an agreement to account to the Commercial

shareholders for the overplus of assets over liabilities, if any.

In the liquidation of the bank's assets a time would come when all were exhausted and if they had been insufficient to pay its liabilities, the deficit would represent a loss to the American under the contract or sale; and there would, accordingly, be no overplus to pay to the Commercial shareholders.

The Master has previously found on page 22, under subdivision 6, of his said report, that

"On August 1, 1914, the Commercial transferred all of its assets to the American. The first paragraph of the contract also shows that there was an actual transfer of the assets.

396 Reference is here made to evidence cited under Exceptions II, III, VII, X, XX, XXIV, XXXV, XXXVIII, and LXXXVI; also particular reference is made to petition of plaintiff, paragraphs 3 and 4, to the resolution of American's Directors of August 1, 1914, the resolution of the Commercial's Directors of August 1, 1914, and the contract of August 11, 1914.

LVI.

That the Master found, stated and certified, at the top of page 98, of his said report, that

"I fail to find in the resolution of the American any offer to take over as cash or as security all of the assets of the Commercial at a valuation at least the equivalent of the liabilities of the Commercial. This

does not seem to have been the understanding of the Commercial."

In so finding the Master erred, the error being prejudicial to defendants:

(1) Because such finding is not warranted by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such finding is contrary to the resolution construed in the light of the evidence.

(4) Because said finding is not authorized by the pleadings in the case.

The Master should have found that in the resolution of the American it was provided that the assets of the Commercial could be taken over as cash, provided, in the estimation of the officers of the American, such assets would be sufficient to protect and secure the American in making such a trade.

In support of this exception see the evidence just cited under Exceptions XLVIII, XLIX, L, LI, LII, LIII, LIV, and LV, and the evidence cited under Exceptions there referred to.

LVII.

That the Master stated, certified and concluded, at the bottom of page 98 of his said report, that

397 "Another provision of the resolution is that it shall not become effective until the other banks

of the Macon Clearing House Association shall agree to supply cash and exchange that may be necessary to meet withdrawals by depositors not immediately re-deposited in the American. This is significant as showing that it was not intended that the deposits of the Commercial should be consolidated with those of the American, and that withdrawals of deposits by the Commercial's customers were to be made from the Commercial and not from the American."

In so finding and concluding, the Master erred, for such conclusions are not supported by the evidence.

The Master should have concluded that the provision in the resolution providing that the transfer would not become effective until the other banks of the Macon Clearing House Association shall agree to supply cash and exchange that may be necessary to meet withdrawals by depositors not immediately re-deposited in the American, was waived. This provision of the contract has no significance, save that the American wished to be certain that there would be no strain on its finances in making the advanced payment on the purchase price of the Commercial's assets by reason of the withdrawals by Commercial depositors.

Under the plan of administration decided upon, for the convenience of the American, the depositors were to draw checks on the Commercial, have them O. K'd. by former officers or employees of the Commercial, and present them for payment at the American.

The Commercial's depositors would have been as equally at liberty to withdraw deposits by checks on the American as they were by merely drawing a check on the Commercial and having it paid by the American.

For evidence sustaining this exception see evidence cited under Exceptions X and XII XX.

398 The Master should have found that it was the contemplation of the parties that the depositors of the Commercial National Bank would be paid not by the Commercial, but by the American, and that, in fact, the American did pay these depositors as it had agreed and contracted to do, and as alleged in the 4th paragraph of the petition to the American, that from and after August 3, 1914, the American National Bank paid in due course, and as called upon, all the depositors of the Commercial.

The Master should have found that, although it was contemplated that the majority of the depositors of the Commercial would be perfectly willing to transfer their accounts and deposits to the American, nevertheless, there perhaps would be some depositors who would require the American to pay the sums of money to their credit on the books of the Commercial; and it was further reasonably contemplated that some depositors might become timorous by reason of rumors of bank changes, and be unwilling to allow their deposits to remain in any bank;

And the Master should have found in this situation the American National Bank reasonably concluded that there might have been unusual withdrawals from that bank due to the obligation of that bank to pay the depositors of the Commercial upon demand;

And the Master should have found that it was in this situation that the American sought the aid of the other banks in the City of Macon, that assistance being desired not for the Commercial, but for the American by reason of its obligation to pay the depositors of the Commercial.

399 LVIII.

That the Master, after finding that by the resolutions of the American, its officers were given full power and authority to carry out the general purposes of the resolutions, and that said officers were authorized to make a contract with the Commercial, or with such liquidating agent as might be appointed for the Commercial, after finding among the contracts which may be entered into with a liquidating agent, a form of contract is given by Mr. Pratt under the title "Purchasing assets of liquidating banks"; and after finding that Pratt's work indicates that a contract of consolidation by purchase may be entered into between the absorbing bank and the directors or liquidating agent of the closed association, finds, certifies and concludes, as shown at page 99 of his report, that

"This would indicate in my opinion that the American understood that the contract contemplated was one that could be entered into between the American and the liquidating agent of the Commercial. Save this indirect reference to consolidation, if such it be, there is no reference to consolidation of the Commercial with the American contained in the American's resolution."

In so finding the Master erred, said error being prejudicial to defendants:

(1) Because said finding is without evidence to support it.

(2) Because said finding is contrary to the evidence.

(3) Because said finding does not embrace a correct and full interpretation of the resolution referred to.

The Master should have found that one of the plans provided by the resolution of the directors of the American of August 1, 1914, (Master's Report p. 6) and that the plan which was actually followed provided for a transfer to the American of all the assets of the Commercial "as cash", which provision definitely provided for a purchase of the assets by the American in a plan of consolidation.

The Master should further have found that said resolution provided that the American should take over the business of the Commercial at the close of business on August 1, 1914, which provision was clearly indicative of a purchase by the American of the assets of the Commercial.

LIX.

That the Master found, stated and certified, as shown at page 100 of his report, that

"In view of the attitude of the officers of the Commercial, particularly that of Mr. Mallary, towards consolidation, we would expect to find that attitude reflected in the answer of the Commercial to the proposal of the American as to the conditions upon which its business was to be taken over by the American. The language of the Commercial resolution, however, is less indicative of an immediate sale of assets to the American than is that of the American."

In so finding the Master erred, the error here complained of as being prejudicial to the defendants being the finding of the Master that the language of the Commercial's resolution is less indicative of the immediate sale of assets to the American than is that of the American.

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

(3) Because said finding is not a correct interpretation of the Commercial's directors' resolution of August 1, 1914.

The Master should have found that the principal and first appearing purpose of the resolution of the Commercial directors was a consolidation of the Commercial with the American, as provided and indicated
401 by Section 5223 of the U. S. Revised Statutes and the incidental liquidation of the Commercial under Section 5220 U. S. R. S.

The Master should further have found that, as plainly and conspicuously stated in the first resolution of the resolutions adopted August 1, 1914, (Master's Report pp. 7 & 8) by the Commercial directors, a meeting of the Commercial shareholders was to be called to consider and ratify the consolidation of the Commercial with the American by the sale of the Commercial assets to the American.

The Master should further have found that the provision in said resolution whereby the American was to hold the assets of the Commercial as security was predicated entirely upon the condition that the management and control of the Commercial's assets by the American should or would be interfered with. The Master should have found that this possibility was an exigency or danger which is referred to in the resolution.

The Master should further have found that the provision in said resolution that the American should take over the business of the Commercial clearly indicated the consolidation.

LX.

That the Master found, certified and stated, as shown at page 101 of his report, that

"Doubtless influenced to some extent by a desire to have the assets held by the American as pledgee, so as to provide against any interruption of the plan agreed upon by losing control of the assets through a receivership or otherwise, at once through its board of directors, transferred, assigned and delivered all its assets to the American to fully protect and secure said bank for all moneys advanced or to be advanced."

In so finding the Master erred, said error being prejudicial to the defendants.

402 (1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

The error here complained of is that the Master in effect found that the only purpose to be served by the officers of the Commercial, in transferring all the Commercial's assets to the American was to effect a pledge. The Master should have found that the Commercial transferred to the American all its assets as the first step in the preformance of the agreement of sale for the purpose of practical consolidation, and that it was understood that in the event the control of the American was interfered with and the agreed sale and consolidation made impossible, then and in that event the American should hold the Commercial's assets as security for

amounts paid out by the American in the event the stockholders should fail to ratify the contract or in the event there should be successful interference.

See evidence under Exceptions 2, 3, 10, 20, 34, 35.

LXI.

That the Master stated and certified and concluded on page 101 of his said report, near the bottom of said page, that

"So intent were the officers of the Commercial in keeping control of the assets and having them realized upon in the manner agreed upon and at the same time realizing that they had transferred all the assets as security for advances when only a portion had been demanded, and that they had provided for the payment of advances by a portion of the assets as cash, they made special provision in the 6th paragraph of the contract of August 11th, that in the event of interruption of liquidation for any reason beyond the control of the American, that bank should hold 'all of the assets of the Commercial National Bank as security for the advances which may have been made by it up to the time such liquidation may be so discontinued."

403 In so finding and concluding the Master erred:

(1) Because there is no evidence to sustain such finding.

(2) Because such conclusion is not warranted by the evidence.

(3) Because such finding and conclusion is contrary to the evidence.

(4) Because said finding is not authorized by the pleadings in the case.

The Master should have found that the above clause was incorporated into the contract at the instance of officers and attorneys of the American, and it was done for the benefit of the American.

All of the assets of the Comemrcial having been transferred to the American as cash, in compliance with the sale of the assets of the Commercial to the American and the merger or consolidation of the two banks thereby, and it being uncertain at that time what effect a failure of the Commercial shareholders to ratify such action of the directors would have, this was but an attempt of the American to protect itself fully should the transfer of assets as cash be held void and the liquidation thereof be interrrupted for any reason.

See the 6th paragraph of the contract of August 11th; see also, the evidence cited under Exception II, herein, also Exception X and XX and LXXXVI.

It was admitted in open Court that the attorneys for the American drew and presented the contract of August 11, 1914.

404 LXII.

That the Master found, certified and stated, as shown on page 102 of his report, that

"Notwithstanding the transfer of all assets to the American as security, the option is reserved to transfer as cash assets sufficient in amount and value to fully

protect and secure the advances made by the American, and the Commercial's officers were authorized to make such transfers."

In so finding the Master erred, the error being prejudicial to defendants;

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

(3) Because said finding is not authorized by the pleadings in the case.

Defendants contend that the Master should have found that the transfer of all of the Commercial's assets, which was made on August 1, 1914, to the American was by way of sale and in a plan of practical consolidation.

The Master erred in finding that there was provided for the Commercial an option to transfer from time to time after August 1, 1914, to the American the assets of the Commercial as cash, and in limited amounts "sufficient in amount and value to fully protect and secure the advances made by the American."

The Master here erred in making a construction of the contract and interpretation of the evidence which is not insisted upon by the plaintiff, and which is entirely inconsistent with the plaintiff's claim as made by the pleadings. It is conceded on both sides that all the assets of the Commercial were transferred to the
405 American on August 1, 1914. The plaintiff contends that that transfer was by way of security in all events. The defendants contend that said entire transfer was by way of sale, as a part of a plan

of practical consolidation, with the further provision that in the event the control and custody of said assets should be interfered with, the American should be protected for the advance payments made by it by holding said assets as collateral.

LXIII.

That the Master stated and certified and concluded on page 102, of his said report, the last sentence in the first paragraph on that page, that

"It was apparently the purpose of the parties, therefore, that instead of covering such overdraft by note or notes, the Commercial's officers might transfer sufficient assets as cash from time to time to pay the overdraft or an amount sufficient to leave a balance in favor of the Commercial."

In so finding and concluding the Master erred:

(1) Because such finding and conclusion is contrary to the evidence.

(2) Because there is no evidence to support such conclusion.

The Master should have found that all the assets of the Commercial had been transferred to the American as cash, and that there was no liability or debt of any kind due, or to be due by the Commercial to the American. Under the agreement, however, to account to the shareholders of the Commercial for the overplus, if any, it became necessary to keep an active account of the liqui-

406 dation of assets, and that under the system of book keeping adopted payments made by the American prior to realizing on assets of the Commercial were carried as an overdraft, it being the purpose and the belief of all that gradually as the assets of the Commercial were liquidated this balance would be wiped out, and the account show a new balance in favor of the Commercial shareholders.

For evidence supporting this exception see the evidence cited in support of Exception XX and Exception XXXV.

On age 14 of Section 4, Mr. Mallary testifies that no mention was ever made of the Commercial giving notes to the American.

See also evidence cited in support of Exception XXXVIII.

The plaintiff's petition, paragraphs 3 and 4, as well as the contract, shows that all assets of Commercial were transferred to American August 1, 1914.

## LXIV.

That the Master found, certified and stated, as shown at page 102 of his report, that

"In the recital of the action of the Commercial's directors in the preamble to the contract, this option was foreclosed, no reference being made to a transfer of assets as cash. From which it may be assumed that in carrying out the 'general purpose' of the parties, it was decided not to make or accept transfers of assets as cash."

In so finding the Master erred, the error being prejudicial to defendant:

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

(3) Because said finding is not the correct interpretation of the resolution of the Commercial directors of August 1, 1914.

407 The Master should have found that the conspicuous and outstanding purpose of said resolution was a consolidation of the Commercial with the American in accordance with Section 5223 of the U. S. Revised Statutes, by sale of the Commercial's assets as cash to the American, in connection with this exception, reference is made to Exception LVIII, supra, and the record and evidence therein referred to.

LXV.

That the Master stated, certified and found, as shown at page 103 of his report, that

"As stated, it was contemplated that the Commercial should give its notes for the advances. The evidence shows that this was not done, but that the account showed an overdraft against the Commercial. Reference to the recital of the action of the Commercial's directors in the contract will also show that all reference to the officers of the Commercial giving notes is omitted."

In so finding the Master erred, said error being prejudicial to the defendant:

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

(3) Because said finding is an erroneous interpretation of the resolutions.

The Master should have found that although the making of a loan and the giving of notes was indicated as one of the possible bases of agreement when the agreement was actually made and put into effect, there was no contemplation of having the Commercial to give notes for the reason that there was no contemplation of loan in the principal transaction.

See evidence heretofore referred to and cited in Exception LXIII.

408 LXVI.

That the Master stated and certified on page 103 of his said report, second paragraph, that

"The resolutions construed in connection with the evidence showing the situation existing at the time they were adopted, clearly indicate that the agreement between the parties was that the assets of the Commercial were transferred and assigned to the American as security."

In so finding and concluding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding and conclusion is contrary to the evidence.

The Master should have found that the resolution, in connection with the evidence showing the situation existing at the time they were adopted, clearly indicated that the agreement between the parties was that the assets of the Commercial were transferred and assigned to the American as cash, and that the transaction was a sale.

In support of this exception, see evidence cited under Exceptions II, III, VII, X, XX, XXIV, XXV, XXXVIII and LXXXVI.

## LXVII.

That the Master stated and certified and concluded in the third paragraph on page 103 of his said report, that

"If there was a consolidation effected between the two banks by a sale of all the assets of the Commercial to the American, and the assumption by the American of all the Commercial's liabilities, it would seem that all provisions and resolutions relating to advances were superfluous."

In so concluding the Master erred, for the reason that such conclusion is a clear non sequitur, and is not warranted in view of the contract in this case, and is not supported by the evidence.

409 The Master should have found that this transaction was such a sale, owing to the provision to account for overplus, as prohibited any profit taking out of realization on the assets purchased, but in which it was expected that these assets would eventually be paid for in full by their liquidation; the full

purchase price was not to be paid down but when and as certain liabilities became due, and these payments were accordingly treated or spoken of as 'advances' it being uppermost in the minds of the purchasers that they would from time to time be fully reimbursed for such payments out of funds first realized from liquidation of assets purchased. Other provisions relating to 'advances' had in contemplation the failure of the Commercial shareholders to ratify the action of the directors, and the rather uncertain effect of such failure.

The Master should have further found that the justification and explanation of the word advance and advances is to be found in the fact that it was feared by the American that its contract of purchase might be defeated or embarrassed, and its control and liquidation of the Commercial's assets interfered with by outside influence, Court action or failure on the part of the Commercial shareholders to ratify the sale; and the Master should have found that it was, therefore, provided that in any of the events mentioned, the American should hold said assets as security for the advanced payments made by them.

410— LXVIII.

That the Master found, certified and stated, as shown at page 103 of his report, that

"There is no evidence that the American was not able to provide for any withdrawal of deposits which might be made by depositors who wished to transfer their account from the American to some other bank; and if the American feared such withdrawal, it must look to other banks in Macon for temporary assistance

rather than to the Commercial. The advances were needed by the Commercial because its deposits and other liabilities had not been consolidated with the American, and because it was expected that depositors would make withdrawals from the Commercial and not from the American."

In so finding the Master erred, said finding being prejudicial to the defendant.

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

The Master should have found that the American obligated itself to pay the depositors of the Commercial and that, as alleged in the fourth paragraph of plaintiff's petition, the American proceeded on and after August 3, 1914, having taken charge of all the assets of the Commercial on August 3, 1914, to pay said depositors as deposits were claimed; and the Master should have found that the American possessed and indicated some anxiety lest these calls or withdrawals should be so great as to tax and embarrass the abilities of the American.

In this connection, reference is made to Section LVII, supra, and to the evidence and record therein referred to.

411 LXIX.

That the Master found, certified and stated, as shown at page 104 of his report, that

"The assets and liabilities of the Commercial having been consolidated with the American by sale, there would be no longer any occasion to make reference to paying the liabilities as and when due. The American, the consolidated bank, would be obliged to do this or close its own doors. The American's losses from the transaction would not be indicated by charge on its books against the Commercial, but by a charge off of losses on worthless bank paper and a shrinkage of its resources."

In so finding the Master erred, the error being prejudicial to defendant.

(1) Because said finding is contrary to the evidence.

(2) Because said finding is without evidence to support it.

The Master should have found that the contract was one by which the American purchased the assets of the Commercial as a part and plan of practical consolidation, and should have found that it was necessary or at least proper that the agreement should indicate the clear and express assumption by the American of the liabilities of the Commercial.

The Master should have found that the method of book-keeping adopted by the American was a part of a method of account only and was without probative value as related to the alleged liability of these defendants, and that the defendants could not be bound by the adoption on the part of the American of any system of book-keeping or account to which neither the

officers of the American nor these defendants consented; and should have found that there was evidence of such consent and no evidence that the
412 officers of the Commercial or these defendants had any knowledge of such method of bookkeeping. See evidence referred to in Exception 35.

LXX.

That the Master found, certified and stated, as shown at page 104 of his report, that

"Lewis, cashier of the Commercial, on August 19, 1914, writes to the Comptroller that the 'assets of the association are now held by the American National Bank as security.' Scott, cashier of the American, under date of August 1, 1914, advised the Comptroller that the directors of the Commercial had transferred all of its assets to the American 'as security'. The evidence contains many references to 'consolidation,' 'merger' and 'absorption'; but in view of the plain intention of the parties at the time the directors' meeting was made, and of the construction of the agreement by both parties to it, as disclosed by the evidence, they can have but little evidential value."

In so finding the Master erred, the error being prejudicial to the defendant.

(1) Because said finding as to the contents of the letters referred to is not a fair and full statement of the contents of said letter and is not a correct interpretation of said letters.

(2) Because there is no evidence to support the conclusion that the frequent use of the terms "con-

solidation," "merger" and "absorption" have but little evidential value.

The Master should have interpreted the letter of Lewis, dated August 19, 1914, as follows:

That the holding by the American of the assets of the Commercial as security for advances made by the American related to an incident of the trade whereby it was provided that the American should hold said assets and realize upon them as security in the
413 event the principal purposes of the agreement were defeated either by outside interference, by Court action or by failure of the shareholders to ratify the agreement and place the bank in voluntary liquidation.

The Master should further have found that according to the evidence as shown by copy letters in the case, see printed record, Section 6, pages 21-23, that the correspondence after August 3, 1914, bearing the name of E. N. Lewis, cashier of the Commercial National Bank, was written and done under the direction and control of the American National Bank and its attorneys.

The Master at page 145 of his report, certifies to the Court a portion of the said letter, bearing the signature of E. N. Lewis. Reference is made to the full text of the letter, as shown on pages 126 and 127 of Section 7 of the record of evidence; and reference is also made to the full text of the correspondence which passed between the Comptroller of Currency and the officers of the American and the Commercial, as shown in Section 7 of the printed record, pages 86 to 146.

The Master should have found in connection with the said letter of Scott, cashier, that that letter, bearing even date with the transaction between the two banks,

to-wit, August 1, 1914, showed that the primary purpose of the agreement was the consolidation of the two banks, the incidental liquidation of the Commercial and a protection to the American, in the nature of security in the event the American's control should be
414 defeated by outside influence, by Court order or by failure of the shareholders to ratify the contract and place the Commercial in voluntary liquidation. Reference is made to the full text of the letter at pages 86 and 87, Section 7 of the record of evidence, and to the full correspondence hereinabove referred to.

The Master should have found that the constantly recurring of the expressions "consolidation," "merger" and "absorption" in the resolutions of the directors, the contract, the advertisements printed in the Macon papers under date August 1, 1914, and the correspondence hereinabove referred to is of the highest evidential value, and justifying and compelling the conclusion that the contract in question was one by which the Commercial sold its assets to the American as a part of a plan of practical consolidation.

415 LXXII.

That the Master found on page 105 of his report, that

"The intention of the directors' agreement was that the American should continue to make advances even after the appointment of a liquidating agent, and should continue to hold the assets as security until all the liabilities assumed had been paid."

The Master erred in so finding, the error being prejudicial to defendants:

(1) Because said finding is not supported by the evidence.

(2) Because said finding is contrary to the evidence.

The Master should have found, according to the evidence, that the American obligated itself to pay the liabilities of the Commercial, and that the American was obligated to furnish such amounts as might be necessary for this purpose. The Master should further have found that if, as was contemplated, the American was appointed de jure liquidating agent of the Commercial, then the American should continue to pay the liabilities of the Commercial. The Master should further have found that, in the event some person, corporation or association other than the American was made the de jure liquidating agent, the American should be under obligation to carry out with such liquidating agent its contract of purchase. The Master should further have found that, in the event there was an effectual interference with, or defeat of the contract of purchase and sale, by reason of a Court order, or by reason of the failure of the shareholders of the Commercial to vote for voluntary liquidation, or by reason of the appointment of another liquidating agent who would resist the carrying out of the contract, then, in such events, and only in such events, would the American hold the assets as security, and the Master should further have found that neither of said events occurred. Defendants similarly except to the finding that the assets were transferred as security as set out in first paragraph on page 105.

Defendants refer to the testimony already cited and referred to in Exceptions II and III, VII, X, XX, XXIV, XXXVIII, LXXXVI.

## LXXIII.

On page 105 of said report, the Master certified, found and reported that:

"The recital of the Commercial's resolutions in the preamble to the contract states the action of the directors of the Commercial on August 1 and the condition under which the assets were at that time transferred to the American, that is to say, as security for advances to be made by the American. Reference to this recital is contained in paragraph II of the contract. The contract has been twice ratified with this provision in it by the stockholders. As far as the action of
416 the directors in making this agreement on the first is concerned, certainly so far as it was to be performed prior to its liquidation de jure, such ratification by the shareholders was unnecessary."

In so finding, the Master erred, and such error was prejudicial and harmful to these defendants because, they say, that under the contract and under the resolving portions of such resolution it was the intention of the American and of the Commercial to transfer said property to the American not as security for advances but as a sale of such property, and for the purpose of liquidation and consolidation with the American and that the whole purpose was that said sale was to be made and such transfer was to be had not as security but as absolute conveyances and sales, depending only upon the ratification of the meeting of stockholders,

as is provided by Sec. 5223 R. S., U. S., and that the whole purpose and intention of the parties was that when the stockholders had so ratified the action of the directors the action should relate back and become a part of the contract as fully as if it had been done at the time the contract was made.

The Master should have found that said recital in the preamble, in which the words "as security for advances to be made by the American" are used, show no connection with the other parts of the preamble; that it was the intention of the resolution to provide for liquidation of the Commercial under Sections 5220-5223 of the U. S. Revised Statutes and to consolidate with the American, and to transfer to said American all the assets of said Commercial, which assets were, by said resolution referred to, transferred and assigned to said American on August 1, 1914; and he should have further found that it was the purpose and intention of said meeting of stockholders to ratify only the action of its directors in selling to the Amer-
417 ican the assets of the Commercial, as provided for by the contract.

The Master should have found, also, that the preamble to the resolution was not part of the resolution, and that the resolving part of the resolution entirely negatived any idea that the property had been transferred as security.

Also, in so finding the Master further erred:

(1) Because said finding is not a proper and correct statement of the recital of the Commercial's resolution in the preamble to the contract.

(2) Because such conclusion is not justified by the language of the contract setting out the resolution of the Commercial.

The Master should have found that the recital of the Commercial's resolution in the preamble to the contract states the action of the directors of the Commercial on August 1 and the condition under which the assets were at that time transferred to the American, that is to say, as cash, and in contemplation of the consolidation and liquidation.

The opening language used in the epitome of the Commercial's resolution, as set out in the contract of August 1, is as follows:

"Whereas, on the first day of August, 1914, the Board of Directors of the Commercial National Bank, at a meeting of said Board duly and regularly called to adopt a resolution which authorized the officers of said association to commence proceedings for the liquidation of said association under Sections 5220 and 5223 of the U. S. Rev. Stat., for consolidation with said American National Bank, and to transfer to said American National Bank all the assets of said Commercial National Bank."

The epitome of said resolution, as shown in the contract, also contains the following language:

"And which said resolution further provided that said American National Bank should take over the business of said Commercial National Bank, liquidate said assets,"

"And which resolution further authorized and directed the officers of said Commercial National Bank
418 to make such contract with the American National Bank as might be necessary or proper in order to carry out the general purposes of said resolution, the details of said contract to be left to the discretion of said officers."

as clearly showing the intention of the directors of the Commercial National Bank, defendants here call attention to the notice of shareholders' meeting which was sent to all stockholders of the Commercial on August 1, and which notice recited the action contemplated. It is significant that the shareholders' meeting which ratified the contract containing this epitome of the resolution met pursuant to this notice, which is set out in the report of the Master on Page 9.

LXXIV.

That the Master erred in stating and certifying at the bottom of page 105 of his said report, that

"The assets having been accepted by the American as security, and that bank having made large advances in pursuance of the agreement, it was necessary to protect it in the contract."

The said error was harmful and prejudicial to the defendants:

(1) Because no evidence sustains said finding.

(2) Because said finding is contrary to the evidence, and contrary to all the evidence in the case.

The Master should have found that in pursuance of the intention of the parties and the contract, and as understood by both parties to the contract as evidenced by the resolutions and the conduct of the parties, and by Section 2 of the contract which provides for the purchase of the assets of the Commercial by the American Section 1 of said contract all the property of said Commercial, of every description, including cash and cash without providing for stock in the American, and in items on hand at close of business on August 1, was transferred, assigned and conveyed unto the
419 American, its successors and assigns, in fee simple, forever.

The Master should have found, further, that the large sums paid out by the American were paid because it was necessary for the American to carry out the obligation entered into between it and the Commercial, in the purchase of the Commercial's assets and business.

To sustain this, defendants refer to evidence already cited under Exceptions II, III, VII and X, XX, XXIV, XXXV, XI.

LXXV.

That the Master stated and certified on page 106 of his said report, in the third paragraph on that page, that

"The provision as to the liability of shareholders in the 6th paragraph is perhaps unnecessary but significant of the construction put upon the transaction between the parties at the time the contract was drawn."

In so finding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such conclusion is not warranted by the provision in the contract itself construed in the light of the evidence showing the intention of the parties.

The Master should have found that the provision as to liability of shareholders in the sixth paragraph of the contract is of no significance, viewed in the light of the construction put upon the transaction between the parties at the time the contract was drawn. It seems to be mere surplusage.

The Master should further have found that this contract was drawn by attorneys for the plaintiff, Messrs. Hardeman, Jones, Park & Johnston, and that this particular provision, when read at the Commercial's stockholders' meeting of August 11, was objected to by Mr. E. Y. Mallary, President of the Commercial, and that said provision was allowed to remain in the contract only upon the state of Mr. Andrew Lane to the effect that it was of no consequence, as the shareholders were either liable or not liable, under the law, and that said provision did neither take from or add to their statutory liability, and that under the terms of the contract providing for the sale of the assets by liquidation and consolidation of the Commercial with the American the stockholders would not be liable.

420

For evidence supporting this exception, defendants cite the testimony of Mr. Mallary, at page 6, Section 4:

That after the officers of the American had spent the night examining the assets of the Commercial, he asked Mr. Taylor if he, Taylor, was satisfied to make the deal, and Mr. Taylor stated that he was.

At Page 6, Section 4, Mr. Mallary testified that the merger or consolidation was then agreed upon, and that Mr. Taylor stated that he did not see any reason why the shareholders of the Commercial should not get par for their stock.

This evidence is in thorough accord with Mr. Taylor's admissions hereinafter shown; that the previous negotiations were in connection with consolidation. and that the only loans which Mr. Mallary talked to him about were loans for definite amounts, with a pledge of definite collateral or security, and under conditions with contemplated the continuance of the Commercial National Bank as a full-fledged banking institution.

Mr. Taylor's reputed statement about the character of the assets is entirely harmonious with his written statement to the Comptroller of Currency.

At page 8, Section 4, Mr. Mallary testified that nothing was ever said between him and Mr. Taylor in connection with the trade of August 1, 1914, about the Commercial borrowing money from the American, or the American taking security from the Commercial.

At page 27, Section 4, Mr. Mallary testified that there was not a word said about stockholders' liability throughout the transaction, or any claim that there would be a liability upon the stockholders. This is in thorough harmony with Mr. Taylor's testimony to the effect that while he had stockholders' liability in his mind, he never made any mention of it to any officer of the Commercial.

421 At page 47, Section 4, Mr. Mallary testified that after he had objected to the provision of

the contract relating to stockholders' liability, and after he had assurance from Mr. Lane, he consented to sign the contract, because the Commercial Bank was out of existence then, and that he could not rescind the trade which had been made.

At page 76, Section 4, Mr. Dure again refers to the liability clause of the contract with reference to the liability of the stockholders.

At page 5, Section 5, Mr. Benton testified that he had no recollection of any such statement by Mr. W. T. Anderson as was imputed to him in the recorded proceedings at the meeting of August 12, with reference to the shareholders' liability.

At bottom of page 5, same section, Mr. Benton testified as to Mr. Lane's statement in connection with the liability provision of the contract.

At page 16, Section 5, Mr. Benton testified that he did not think Mr. Anderson made any such statement as was imputed to him in the stockholders' meeting of August 12th.

At page 18, Section 5, Mr. Benton testified as to Mr. Lane's statement relating to contract provision as to liability. On this page he quoted Mr. Lane as having said that he did not think the contract provision as to liability made any difference, and that Mr. Park did not think so either, and that Mr. Park did not think the provision amounted to anything. This testimony of Mr. Benton was not refuted even by testimony of Mr. Park that he had made no such statement.

At page 36, Section 7, Mr. L. P. Hillyer indicates that when the American's officers examined the assets of the Commercial, he thought the assets were pretty bad. However, he was compelled, when his recollection was refreshed, as to his previous sworn statement, to

admit that he thought they were all right, as shown at the bottom of page 55, and top of page 56.

Mr. Hillyer's testimony shows that he began to take a new view of the Commercial's assets after the American had taken over the Commercial, and it was after this new view that he wished certain features arranged, he suggesting to his counsel the matter of taking notes.

At page 13, Section 8, Mr. Taylor refers to his statement about the shareholders' liability. He does not claim that this was ever communicated to any officer, director or stockholder of the Commercial. If his letter to the Comptroller was true, he did not entertain any anxiety as to a deficit.

At the foot of page 29, Section 8, Mr. Taylor's testimony shows that he discovered some time after he took the bank that he had made a bad trade.

422 At page 32, Section 8, Mr. Taylor admitted that he had never discussed with Mr. Mallary the matter of shareholders' liability. He testified that he did not remember any such conversation with Mr. Benton. At page 34, he stated that he did not remember any such discussion with Mr. Mallary, Mr. Dure, Mr. McKay, Mr. Anderson or any of them.

At page 54, Section 8, and following, Mr. Taylor admits that he stated to the shareholders of the Commercial that from information received the stock would be worth one hundred per cent (100%) on the dollar; that he did not express any contrary opinion of his own, and that he humored the report as much as possible.

## LXXVI.

That the Master stated and certified on Page 106 of his said report, that

"The parties were not altogether on unequal terms when this contract was executed. While the American held the assets, yet it had advanced up to the 12th of August about $340,000, and must have been interested in having the agreement carried out."

In so finding the Master erred, such finding being harmful to the contentions of the defendants:

(1) Because such finding was contrary to the evidence.

(2) Because such finding is not supported by the evidence.

(3) Because such finding is not a correct conclusion to be drawn from the situation existing at the time the formal contract of August 11, 1914, was presented.

The Master should have found that at the time this contract was executed the Commercial was absolutely powerless; that it had ceased to do a banking business and that all of its books, funds and assets of every description had been transferred to the American and were then in the power, custody and control of the American; that its officers had ceased to function, and that the administration of its affairs was being conducted by the American bank in accordance with the terms of a contract of sale for purpose of liquidation and consolidation with the American; and that after August 1 there was no chance whatever to withdraw the affairs of the Commercial from the hands
423 of the American and to begin business again or put the bank on its feet again.

And, while it is true that the American may have advanced payments on the purchase price in the sum of $340,000 on the 12th day of August, it is also true that at that time the shareholders of the Commercial thought that the assets of the Commercial were largely in excess of its liabilities, and that there would be an overplus arising by virtue of the liquidation. If, at that time, the American had failed to carry out its contract, and had attempted to turn back such assets of the Commercial as it held, ruin would have followed, and there would not only have been no chance for the stockholders of the Commercial to realize anything on their stock by liquidation but many of its liabilities would have been unpaid. It is apparent, therefore, that these stockholders of the Commercial were held in the power of the American and were practically compelled to ratify any contract which was presented to them at that meeting, but that the ratification by the stockholders, in view of the terms of the contract, the notices sent to the stockholders stating the purpose of the meeting, and the circumstances surrounding the transaction of the business by the stockholders, all show that the purpose of the contract was to be a contract of sale and not to create the relation of debtor of the Commercial to the American; and the Master should so have found.

For evidence supporting this exception, see the evidence heretofore cited under Exceptions 2, 3, 10, 20, 24 and 35, ..... and .....

424 LXXVII.

That the Master stated and certified in the first paragraph on page 107 of his said report, that

"The provision in Paragraph V of the contract relative to the assumption by the American of the Commercial's circulating notes, under Sec. 5223 R. S., is not inconsistent with other provisions. Under that section, if a national banking association is in good faith winding up its business for the purpose of consolidating with another association it shall not be required to deposit lawful money for its outstanding circulation. The American purchased the bonds of the Commercial and assumed its circulation. This does not show that a consolidation as to other assets has already taken place, but at most means that it was understood by both parties that the Commercial was "in good faith winding up its business for the purpose of consolidating "at a later time."

In so finding the Master erred, such finding being harmful and prejudicial to the claims of defendants.

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such finding and conclusion is not the correct deduction from the evidence showing the intention of the parties.

The Master should have found that while consolidation in form and completion was deferred until after the voluntary liquidation on a formal vote of the shareholders, there was in effect an actual or practical liquidation begun on August 1, 1914, and that this liquidation and consolidation with the American was the

intention of all parties from the beginning of the transaction and throughout.

The Master should have also found, with reference to the purchase of the bonds of the Commercial and the assumption of its circulation, that the bonds were purchased by the American and taken over by the American at the market price in New York on August 1, 1914, and that this, together with the other facts in the case, shows that the consolidation by purchase of the assets of the Commercial by the American, as understood by both parties, has already taken place, dependent only upon the action of the stockholders at the meeting which had been called for that purpose; and should have found that the purchase of said banks as of August 1, 1914, and the assumption of the circulation, did, in connection with Sec. 5223 R. S. clearly indicate a consolidation.

425

In support of this exception, defendants cite the evidence heretofore cited under Exceptions 2, 3, 10 and 20.

## LXXVIII.

That the Master stated and certified on page 107 of his said report that

"In Paragraph 2 of the contract, the Commercial agrees to procure a resolution from its shareholders of consolidating the same with the American National Bank by the purchase of the assets of said Commercial National Bank by the American National Bank. This has not been done, although the question has been submitted to two meetings of stockholders. The reason apparent from the evidence is that the valuation of the assets cannot be agreed upon by the parties.'

In so finding the Master erred, such finding being prejudicial and harmful to the contentions of the defendants,

(1) Because such finding is not supported by the eviden

(2) Because such finding is contrary to the evidence.

(3) Because such conclusion is not a proper deduction from the acts of the parties, construed in the light of the evidence, and because the Master, when he says "this has not been done, etc.," does violence to all the testimony with reference to the action of the stockholders at its two meetings, and the testimony of Mr. R. J. Taylor, as contained in his letter to the Comptroller of the Currency, dated August 5, 1914, (Master's Report, p. 136), and the advertisements already referred to and contained in the Master's Report, showing that such purchase, consolidation and absorption of the Commercial National Bank, its assets and affairs, had been taken over and accomplished by the American.

The Master should have found that there was a compliance with the provisions in the contract in
426 which the Commercial agreed to procure a resolution from its shareholders consolidating the same with the American National Bank by the purchase of the assets of said Commercial National Bank by the American, and should have found that the American accepted and acted on the action of the stockholders and their meetings as being a compliance with the terms of the contract and as carrying out the purposes for which the contract had been made.

The Master should have also found that from there evidence there had been a valuation placed upon the assets of the Commercial, and that that valuation, as made by the officers of the American, showed that such assets were amply sufficient to pay all the liabilities of the Commercial, though its stock might be impaired. The Master should have found that the Commercial shareholders, in approving on August 12, 1914, and in Sept. 1914, the action of the Directors of August 1, the written contract of August 11, the shareholders having met in response to the call set forth on page 9 of the Master's Report, ratified the sale, consolidation and liquidation.

For evidence supporting this exception, see letter of R. J. Taylor, President of the American National Bank, record evidence Book ....., page ....., and also reported by the Master on page 136 of his report.

See, also, the evidence heretofore cited under Exceptions 2, 3, 10, 20, 24, 35, 38 and 86 .... and ....

## LXXIX.

That the Master stated and certified at the top of Page 108 of his said report that

"The question of sale of assets must, therefore, have been left open for future consideration."

In so finding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

The Master should have found that all the assets of the Commercial were sold to the American on August 1, 1914, and that the only matter left open for future consideration was the ratification by the Commercial shareholders of the contract as made, such ratification being necessary for the voluntary or de jure liquidation, and desirable in all aspects. While it is true
427 that the terms of the sale were of such a character that the assets of the Commercial were not then and there valued and the excess actually paid over to the shareholders of the Commercial but, under the terms of the agreement, the as- were to be valued by their actual liquidation and the overplus (if any) paid to the Commercial shareholders, it was, nevertheless, a sale of assets.

For evidence supporting this exception, see evidence heretofore cited under exceptions 2, 3, 10, 20, 24, 35, 38, 86, ..... and .....

## LXXX.

That the Master stated, found and certified on Page 108 of his said report that

"This cause for the non-action of the shareholders seems supported by the statement of Scott, cashier of the American, in his letter to the Comptroller under date of Oct. 21, 1914, that 'these assets could not be accepted by the American at face value nor at the values placed upon them by the Commercial,' and by the following excerpt from the minutes of the joint committee of shareholders and directors of April 6, 1915:

'The desirability of selling the American National Bank all of the unpaid notes at an agreed upon valua-

tion was discussed at some length, and it was decided that the committee from the Commercial National Bank would consider the matter of placing a value on the separate items with a view to recommending to the stockholders that this plan be adopted.'"

In so finding the Master erred:

(1) Because such conclusion is not warranted by the evidence.

(2) Because such conclusion is not a proper deduction from the evidence, of the action of the general committee of shareholders and directors.

The Master should have found that the action of the joint committee of April 6, 1915, was necessitated by reason of the fact that the assets of the Commercial were not worth their face value, and that, ac-
428 cordingly, if the liquidation was to be speeded by allowing the American to take these assets and to account for them at an agreed valuation, some fixed valuation had to be placed thereon in order that the American might carry out its obligation and pay the overplus after satisfying all the liabilities of the Commercial to the stockholders.

He should also have found that the letter referred to as written by Scott to the Comptroller had no probative value, and was a mere self-serving declaration by an officer of the American, which, being written long after the contract had been entered into, was a contradiction of his own previous letters and of the president of the American and of the published advertisements in the papers reported by the Master, which had been prepared by Mr. Scott and published by him

at the direction of the officers of the American National Bank, which showed that Mr. Scott's statement in this letter was entirely contrary and different to his statements previously made in his letter to the Comptroller and the advertisements referred to.

The Master also should have found that no further action by the shareholders was necessary in view of their ratification of the original contract of sale. The Commercial was unwilling that any of their assets should be sacrificed by fixing a valuation on all assets which, in their opinion, was less than their real value, and, likewise, the American was unwilling to place a fixed valuation on these assets which would meet the demands of the Commercial, and, accordingly, at the suggestion of officers of the American, the plan adopted was decided upon.

For evidence supporting these exceptions, see evidence heretofore referred to under Exceptions 3, 7 and 10.

429 LXXXI.

That the Master stated and certified, at the bottom of page 108 of his said report, that

"Although liquidation and consolidation by sale of assets were contemplated, the agreement entered into by the two banks through their directors for the purpose of enabling the Commercial Bank to procure funds to pay its obligations as herein stated, was not dependent upon such contemplated liquidation and consolidation."

In so finding, the Master erred:

(1) Because such finding is contrary to the evidence.

(2) Because there is no evidence to support such finding.

The Master should have found that the agreement entered into between the two banks, through their directors, was a practical consolidation and that there was in fact an actual and practical consolidation effected on August 1st, 1914.

For evidence supporting this exception, see evidence heretofore cited and referred to under exceptions III, X, XX and 86.

## LXXXII.

That the Master stated and certified, on page 109 of his said report, that

"While the bank was in active operation, its liquidation not having been determined upon by its shareholders, it was capable of incurring obligations for which its shareholders would be responsible under the statute."

In so finding, the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is an erroneous conclusion from the opinion of the Circuit Court of Appeals.

The Master should have found that while its liquidation had not been formally determined upon by its shareholders, its status was that of a liquidating bank for the reason that there had been an actual and practical consolidation of the Commercial with the American, and that the Commercial had ceased to do a banking business on August 1, 1914, and that after
430 August 1, 1914, none of the Commercial officers, was authorized to conduct or carry on a banking business for the Commercial and did not do so, and that all that was done, therefore, in the matter of liquidating and winding up the affairs of the Commercial was done by the American through its officers and under their supervision, in pursuance of the agreement entered into by the contract of sale.

The Master should have further found that the statement of the Circuit Court of Appeals to the effect as set out in the quotation just above that the status of the Commercial was not that of a liquidating bank, was made in view of the allegations in the amendment to plaintiff's original bill, and that as such allegations were not sustained by the evidence this statement has no application to the case as made.

For evidence supporting this exception, see the evidence heretofore cited and referred to under Exceptions 7, 10 and 20, 86 .... and ....

431 LXXXIII.

That the Master stated and certified at the top of page 110 of his said report, that

"At the same time, if an indebtedness actually existed, it is immaterial whether it is evidenced by note

of the Commercial or by overdraft. If there was no indebtedness, and the entry on the Commercial's books that a certain amount is "due the American Bank" meant that nothing was due, it would be equally true that a note evidencing such indebtedness would also mean that in fact nothing was due to the American."

In so finding the Master erred:

(1) Because such finding and conclusion is not supported by the evidence.

(2) Because there is no evidence to support such conclusion.

(3) Because such conclusion is erroneous.

The Master should have found that the entry on the books of the two banks showing the overdraft was but a memorandum entry, the result of the system of bookkeeping determined upon by the officers of the American to show the overplus, if and when the same existed.

Had a note been given to the American, as was provided for in the resolution in case the transfer of assets had been as security and not as cash, this would have clearly evidenced the debt. It would have been the highest evidence of a debt. As no note was given, and there was no agreement that, in lieu of giving notes, the indebtedness would show as an overplus, and as there is otherwise no evidence to indicate that an indebtedness was intended, it is clearly evident that this entry was but a memorandum.

For evidence supporting this exception, see the evidence heretofore cited under Exceptions 24, 35, 38.

LXXXIV.

That the Master stated and certified as his first conclusion of law on page 111, of his said report, that

432 "On August 1, 1914, the Commercial National Bank and the plaintiff, the American National Bank, through their Board of Directors, respectively, entered into an agreement, under which the plaintiff agreed to assume and undertook to pay all of the liabilities of the Commercial National Bank when and as the same should be presented for payment, and as security for the sums advanced, and to be advanced, the Commercial National Bank, under a resolution of the Board of Directors thereof, at a meeting held on August 1, 1914, transferred, assigned and conveyed to plaintiff all of its assets of every kind and character, including its cash on hand, bills receivable, stocks, bonds and securities, its banking house and other real estate, and all other assets.

This agreement was afterwards reduced to writing and duly executed by the Commercial National Bank and the American National Bank, through their respective officers, and was thereafter ratified by a two-thirds vote of the shareholders of the Commercial National Bank."

In so finding the Master erred:

(1) Because such conclusion is not supported by the evidence.

(2) Because such conclusion is contrary to the evidence.

(3) Because such conclusion is contrary to the law of the case construed in the light of the evidence.

The Master should have found and certified that, under the evidence set out by the Master, together with the evidence not set out by him, and to which reference is herein made, that on August 1, 1914, the Commercial ceased to do a banking business, and ceased to transact business as an active banking institution in the usual and customary way; that on that date the Directors of the Commercial agreed with the American to sell, transfer, assign and convey to the American all of its assets of every kind and character, including its cash on hand, bills receivable, stocks, bonds, and securities, and its banking house, and other real estate, and all other assets absolutely and in fee simple, in consideration for the undertaking of the American to pay all of the withdrawals by depositors and other liabilities of the Commercial; and to account to the Commercial shareholders for the overplus of assets over liabilities if any; and that these assets were then and there taken over by and placed in charge of the American as a purchase and not as security for any sums advanced, but for cash and as the property of said American Bank. That the agreement was on August 11, 1914, reduced to writing which fully ex-
433 pressed the intention of the parties, to-wit: An absolute sale and conveyance of the assets of the Commercial to the American.

For evidence supporting this exception see Evidence cited under Exceptions Nos. 2, 3, 7, 10, 20, 24, 35, 38, 86.

LXXXV.

That the Master stated and certified and concluded, under conclusions of law No. 2 on page 112 of his said report, that

"The American National Bank's obligation to pay the Commercial National Bank's depositors and other liabilities when and as the same were presented for payment was effective from the time the contract was made and was not dependent or contingent upon the contemplated closing and liquidation of the Commercial National Bank," or upon its consolidation with the American National Bank by sale of assets, 'being determined upon the shareholders of the Commercial National Bank.'"

In so finding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such finding is contrary to the law of the case construed in the light of the evidence.

The Master should have found that, the American's obligation to pay the Commercial's depositors and other liabilities was an absolute undertaking, and given in payment of the assets turned over to the American, and was made in contemplation of liquidation and consolidation of the business of the Commercial by the American, and was then and there a complete sale and delivery, and could only be changed in the event the shareholders failed to ratify the sale, or the sale was interfered with by legal process or proceeding.

In this connection, see the contract of August 11, 1914, and particularly the first and sixth paragraphs

thereof. See also, the evidence heretofore cited under Exceptions 2, 3, 7, 10, 20.

## LXXXVI.

That the Master stated and certified and concluded under Conclusion of Law No. 3, on page 112, of his said report, that

"At the time the contract was made, 'the Commercial National Bank was in active operation, its liquidation not having been determined upon by its shareholders', and 'it was capable of incurring obligations for which its shareholders would be responsi-
434 ble under the statute 8.'"

In so finding the Master erred:

(1) Because there is no evidence to sustain such finding.

(2) Because such finding is contrary to the evidence.

(3) Because such finding is contrary to the law of the case viewed in the light of the evidence.

The Master should have found and certified that, at the time the contract of August 11, 1914, was executed and at all times after Aug. 1, 1914, the Commercial was not in active operation but had ceased to do a banking business, or any business in the usual and customary way; that the liquidation and consolidation of the Commercial with the American under Sections 5220 and 5223 of the United States Revised Statutes, had been

determined upon, and only awaited the action of the Commercial shareholders ratifying same; that any contract claimed to have been made with the American after August 1, 1914, was not such a contract made in the usual and customary way for which the stockholders are responsible under the statute.

In support of this exception defendants cite the evidence heretofore cited under Exceptions X and XX, and expressly refers to the following evidence:

At page 67, Section 1, of the record, shows a joint meeting of the committees, and shows that Mr. O. A. Park was at that time acting as attorney of the American National Bank, the liquidating agent of the Commercial National Bank. Regardless of what any Court may say as to when a legal liquidation begins, this, as well as many other portions of the record, shows that the American took up the work of liquidating agent long before the shareholders' vote of September 30, 1914.

This witness testified that the Commercial National Bank went into liquidation on August 3, 1914, and the books clearly so indicated (page 190 of the record).

As shown by page 12, section 3, Souder was asked why the Commercial did not make any new loans, or make collections, he having testified that the bank did not make new loans or collections on or after August 3, 1914, the witness stated that the reason that neither loans nor collections were made was because the bank began liquidation on August 3, 1914.

At page 12, Section 3, witness Souder admitted the method of dealing with deposits and checks on and after August 3, 1914, was not in accordance with the usual and customary way of conducting a banking business.

435 At page 69, Section ...., we have a record of the American National Bank acting as liquidating agent of the Commercial and describing itself as the liquidating agent of the Commercial. This was thirty (30) days in advance of the Commercial's stockholders' vote of September 30th, and shown, as it is elsewhere shown, that the American in fact and in name, was liquidating the Commercial in advance of the stockholders' vote, and liquidating was begun on August 3, 1914.

At page 21, part 7, Mr. Scott breaks loose with the method of accounting and the carrying of the balance as an overdraft. He admits that it was done as a matter of convenience.

At page 23, section 7, Mr. Scott admits that the vault at the Commercial building was in charge of Mr. Karsten, a man who never had the remotest connection with the Commercial. He testified that Karsten begun with the liquidation soon after August 1, 1914, as an employee of the American National Bank.

At page 33, Section 7, Mr. Scott testified: "I don't remember the exact date, it was on the Monday that the liquidation began, whether it was the 2nd, or 3rd, I do not now recall." (Reference being to August 2nd or 3rd, 1914).

At page 76, section 7, P. D. Karsten shows that he was employed by the American National Bank on or about August 1, 1914, and that he was employed specifically to wind up the affairs of the Commercial. Karsten testified that E. N. Lewis remained at the American about thirty (30) days. At page 83, he testified that he received his instructions from R. J. Taylor as to the affairs of the Commercial.

At page 57, section 8, Mr. Taylor testified that for sometime after the American took the business of the

Commercial, beginning on August 3, 1914, the American had two or three of the Commercial's clerks in connection with the liquidation or administration. He stated that for a day or two there might have been more than two or three, but that it narrowed down to probably two or three after the rush was over.

At page 72 section 8, Mr. Taylor testified that the American began the liquidation of the Commercial on Monday morning, August 3rd. He stated that the Commercial went out of business then, except for the matter of retaining its corporate existence.

## LXXXVII.

That the Master stated and certified under Conclusions of Law No. 4, on page 112 of his said report, that

"Insofar as the contract obligated the American National Bank to take care of the liabilities of the Commercial National Bank prior to the latter being closed and put into liquidation, it was one capable of being made by the two banks acting through their respective boards of directors and managing officers without being authorized or ratified by a vote of the shareholders of either."

In so finding the Master erred.

(1) Because such conclusion is contrary to the evidence.

436 (2) Because such conclusion is contrary to the law of the case construed in the light of the evidence.

The Master should have found that, there was no agreement entered into after August 1, 1914, by which the American obligated itself to take care of the liabilities of the Commercial prior to the latter being closed and put into liquidation, and that the only contract made by the Commercial was one of sale; that under the evidence submitted, and under the contract as shown by the agreement, the directors of the Commercial did not have power to make any contract after August 1, 1914, that the American should take care of the liabilities of the Commercial prior to the latter being closed and put into liquidation; but that the Commercial's directors did have power and authority to make the contract of sale of August 1, 1914, and to provide for consolidation and liquidation as stated in the contract, subject to the ratification of the Commercial shareholders. When the agreement as made, was ratified by such shareholders it was one of sale of assets and liquidation and consolidation.

The defendants cite evidence heretofore cited under Exception I, and the contract of August 11, 1914, in support of this exception.

## LXXXVIII.

That the Master stated and certified under Conclusion of Law No. 5, on page 113, of his said report, that

"'By the terms of the contract the American National Bank obligated itself to continue to pay the Commercial National Bank's depositors and other liabilities when and as the same were presented, after the latter went into liquidation and was closed.'"

In so finding the Master erred, in that such finding does not fully set out the true obligation undertaken by the American in accordance with the terms of the contract.

The Master should have found that, by the terms of the contract the American took over absolutely as purchaser of the assets of the Commercial, and agreed to pay, as the purchase price thereof, the depositors of the Commercial and other liabilities of the Commercial beginning on August 3, 1914, and continuing after liquidation was formally authorized by the stockholders.

437 In pursuance of the contract, the American did so pay the obligations of the Commercial beginning with August 3rd. The transaction was one of sale of the assets of the Commercial to the American, made in contemplation of its liquidation and absorption by the American, and was not a loan of money, but that such payment to the depositors and of the other obligations of the Commercial was paid as the purchase price of the assets and business of the Commercial all of which were taken over by the American on August 1, 1914.

In support of this exception, defendants cite the evidence heretofore cited under Exceptions 2, 3, 7, 10, 20, and 35.

## LXXXIX.

That the Master stated and certified under Conclusions of Law No. 6, page 113, of his said report, that

"'The American National Bank, while the Commercial National Bank in the customary way was trans-

acting business as an active banking institution, so made payments for it and at its instance or request that a claim or demand was created against the last named bank for which its shareholders are by the statute made individually responsible, to the extent of the amount of their stock.'"

In so finding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such finding and conclusion is contrary to the law of the case construed in the light of the evidence.

(4) Because such finding is contrary to law.

(5) Because such finding is not justified by the pleadings.

The Master should have found that the American, after the contract had been entered into, and the Commercial was no longer transacting business in the usual and customary way as an active banking institution, made payment of the claims or demands against the Commercial, but made these payments under the con-
438 tract as the purchase price of the assets and business of said Commercial Bank. The Master's conclusion No. 6, is but a quotation from the pleadings or amended bill of the plaintiff, which was quoted in the decision of the Circuit Court of Appeals.

There is no evidence to justify such a finding on the part of the Master, as the plaintiff had absolutely failed to show that "while the Commercial was in the customary way transacting business as an active banking institution, the American so made payments for it at its instance of request." On the contrary, the evidence clearing shows that the Commercial had ceased to do a banking business on the date on which the American began to make these payments and that these payments were made in accordance with the terms of a contract which was a contract of sale and that there was no debt or obligation created against the Commercial, and therefore, none for which its shareholders are individually responsible to the extent of the amount of their stock.

For evidence supporting this exception, see evidence cited under Exceptions 2, 3, 7, 10, 20, 24, 35, 38, 86, 75.

XC.

That the Master stated and certified under Conclusions of Law No. 7, page 113, of his said report, that

"In carrying out the obligations of said agreement and contract, the Commercial National Bank became indebted to the American National Bank, in the amount hereinafter stated. Such indebtedness, is a contract, debt or engagement of the Commercial National Bank, within the meaning of the Act of Congress imposing upon the shareholders of National Banking Associations liability for the debts, contracts or engagements of such associations."

In so finding the Master erred:

(1) Because such finding is not supported by the evidence.

(2) Because such finding is contrary to the evidence.

(3) Because such finding is contrary to the law of the case.

439 The Master should have found that, in carrying out the obligations and undertaking of the agreement and contract between the two banks, the Commercial did not become indebted to the American in any sum.

The relation of debtor and creditor did not arise under the terms of the contract between these two institutions. On the contrary, the contract, as written, construed in the light of the evidence adduced before the Master, clearly shows that the intention of the parties was to sell, convey and deliver to the American, as purchaser, all of the assets of the Commercial; that the American accepted and took over, and took possession of such assets absolutely, as purchaser and not as security or as a creditor; that, accordingly, the Commercial did not become indebted to the American bank in any amount, and that, therefore, there is no liability upon the part of the shareholders of the Commercial for this deficit which has arisen by liquidation of the Commercial's assets.

For evidence sustaining this exception, see the evidence heretofore cited under Exceptions 2, 3, 7, 10, 20, 24, 35, 38, 75 and 86.

440 XCI.

That the Master stated on Page 114 of his said Report the following:

"Issue No. 7, Main Case.

"Can the American Bank maintain this suit, or must it abate by reason of the liquidation of said Bank?

"My conclusion is that the American National Bank can maintain this suit."

The Master erred in so finding, which error was harmful to the defendants.

The Master should have found that the American Bank could not maintain this suit in its own name, as it is now undertaking to do, because the evidence shows that the American was the liquidating agent of the Commercial and that the American had sold its affairs and property to Joel Hurt and his associates, and that the American Bank had no further interest in this suit, and that Joel Hurt, at the time the suit was brought and now, had been appointed liquidating agent of the American, and that at the time the suit was brought and now the American was in process of liquidation itself, and that Joel Hurt was its liquidating agent, and

that by reason of these facts, under the law, the American could not maintain the suit.

C. L. BARTLETT,
441 R. L. BERNER,
GREENE F. JOHNSON,
Solicitors for Oscar Bradley; W. J. Beeland; L. O. Benton and Brother; L. O. Benton; J. S. Coon; Mrs. Ann L. Dasher, Executrix of Arthur L. Dasher, deceased; Frederick C. Ries, Jr., Executor of F. C. Ries, deceased; R. L. Davis; J. Marion Dunwody; Kenneth W. Dunwody, W. Elliott Dunwody; W. E. Dunwody; W. H. Hightower R. E. Hightower; J. C. Hinton; Evelyn W. Hubbell; Geo. W. Hubbell; Macon Cooperage Company; E. A. Middlebrooks; Mrs. Bessie N. Proudfit, Executrix of A. Proudfit, deceased; W. A. Roush; W. A. Roush, Agent; Ed. A. Sheridan; Mrs. Lizzie M. Shorter; R. L. Smith; W. D. Wells; W. E. Wilburn; W. T. Myers; W. A. Daniel; Mary Virginia Daniel; W. A. Little; A. H. Birdsey; Miss Meta Isabel Pace; J. W. Payne; McEvoy Book and Stationery Company; and Queen V. Howell.

CHARLES AKERMAN,
JESSE HARRIS,
Solicitors for Mrs. H. G. Leak, W. A. McKenna, Jessie P. Streyer; H. C. Tindall, Julia C. Tindall, guardian for Bessie Tindall; F. C. Tindall and J. S. Tindall.

FEAGIN & HANCOCK,
Solicitors for F. W. Williams; P. H. Williams and Guy Armstrong.

RYALS and ANDERSON,
Solicitors for The Atlantic National Fire Insurance Company.

HERRING & SPARKS;
W. A. DODSON,
Solicitors for John F. Lewis, Mrs. Lamar Lewis Oglesby; Mrs. J. E. Springer (Mrs. Chas. Thompson).

HALL, GRICE & BLOCH,
R. C. JORDAN,
Solicitors for defendants, The Commercial National Bank; C. M. Adams; W. T. Anderson; C. H. Andrew, Trustee for Clarence, James and Martha Andrew; Miss Mary Bierman; Mrs. W. M. Bairman; L. H. Burghard; Central Trust Company; Commercial and Savings Bank; Leon S. Dure; Thomas B. West, temporary administrator of Claud Estes, de-

ceased; F. H. Hertwig; E. D. Huguenin; E. N. Jelks; Mrs. Hattie J. Lane, Executrix of A. W. Lane, deceased; J. W. Minter; Cecil Morgan; T. C. Parker; A. J. Sams; Mary Lou Smith; J. Freeman Hart; P. D. Todd; W. P. Wheeler; B. A. Wright; Mrs. Ruby Stafford; J. Tom Dent; E. Y. Mallary; Frank L. Mallary; J. W. Stafford.

HALL, GRICE & BLOCH,
E. M. SMITH,
Solicitors for P. W. Pullin and R. W. Dickerson.

HALL, GRICE & BLOCH,
JOHN M. SLATON,
Solicitor for A. B. Hinkle; Mrs. Lena Mrs. Annie Inman Grant.

442 WILL GUNN,
Solicitor for A .B. Hinkle; Mrs. Lena P. Jelks; Joel A. Smith; and Alexander Irvine.

C. L. BARTLETT,
R. L. BERNER,
GREENE F. JOHNSON,
Solicitors for L. O. Benton, L. O. Benton and brother; John R. Malone, Jr., Stockholders of the former corporation known as The Southern Securities and Financing Company,

now dissolved, and so dissolved at time of filing this suit, who join in these Exceptions in the event the Court should hold that said Stockholders, and said corporation are or can be made parties defendant to this Bill.

AUGUSTIN DALY,
Solicitor for Cecil Morgan.
C. L. BARTLETT,
R. L. BERNER,
AUGUSTUS O. B. SPARKS,
J. E. HALL,
WARREN GRICE,
C. J. BLOCH,
CHARLES AKERMAN,
Of Counsel.

Filed in Office June 12, 1920.

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443 ORDER CONFIRMING REPORT OF SPECIAL MASTER.

The above stated cause coming on to be heard on exceptions to the Master's report;

It is considered by the Court that the findings of the Master on the ultimate and controlling facts are supported by the evidence; and his conclusions of law on the main issue are in accord with the decision of the Circuit Court of Appeals; and his rulings on the special issues are not open to the exceptions made against them.

Therefore, be it ordered that the Master's Report be confirmed and leave is granted to enter a decree in consonance therewith.

This August 27th, 1920.

BEVERLY D. EVANS,
U. S. Judge.

Filed August 28th, 1920. Irene Elkins, Deputy Clerk.

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444 BILL TO ENFORCE SHAREHOLDERS' STATUTORY LIABILITY.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

American National Bank of Macon,
Plaintiff,
vs. In Equity No. 25.
Commercial National Bank of Macon and its Shareholders,
Defendants,

Final Decree.

The above stated cause having been referred to J. N. Talley, Esq., Standing Master in Equity, and said Standing Master having filed his report wherein he found that the Commercial National Bank of Macon is indebted to the American National Bank of Macon, Plaintiff, in the sum of $327,204.70, together with interest thereon from the 20th day of April, 1920, at 7 per cent, per annum, and that said indebtedness is a contract, debt

and engagement of the said Commercial National Bank of Macon for which the shareholders thereof are individually responsible, equally and ratably, and not one for another, to the extent of the full par value of their stock therein; that is to say, one hundred dollars per share respectively; and exceptions to the Master's findings of fact and to his conclusions of law having been overruled by the Court, and the Master's report having been confirmed in all respects:

It is thereupon considered, ordered and decreed by the Court, that the report of the said Standing
445 Master be made the judgment and decree of the Court.

And it is further considered, ordered and decreed that the Plaintiff, the American National Bank of Macon, do have and recover of the said Commercial National Bank of Macon the said sum of $327,204.70, together with interest on said sum from the 20th day of April, 1920, at the rate of 7 per cent. per annum; and do have and recover of the following named parties, shareholders of the said Commercial National Bank of Macon, who have been duly served and made parties defendant, the amount set opposite their names respectively, together with interest thereon from this date at the rate of seven per cent (7%) per annum, to-wit:

Shareholders Residing in the Western Division of the Southern District.

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Adams, C. M. | Macon, Bibb County | 10 | $1,000.00 |
| Anderson, W. T. | Macon, Bibb County | 70 | 7,000.00 |
| Andrew, C. H. | Macon, Bibb County | 8 | 800.00 |
| Andrew, C. H. Trustee for Clarence, James and Martha Andrew, | Macon, Bibb County | 1 | 100.00 |
| Armstrong, Guy | Macon, Bibb County | 20 | 2,000.00 |
| Atlantic National Fire Insurance Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 108 | 10,800.00 |
| Bairman, Miss Mary | Macon, Bibb County | 1 | 100.00 |
| Beeland, W. J. | Macon, Bibb County | 3 | 300.00 |
| Benton, L. O. | Monticello, Jasper County | 10 | 1,000.00 |
| Benton, L. O. & Brother a co-partnership composed of L. O. Benton and Eugene Benton, and of said L. O. Benton and Eugene Benton, Individually, both of | Monticello, Jasper County | 45 | 4,500.00 |
| Bradley, Oscar | Macon, Bibb County | 25 | 2,500.00 |

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Burghard, L. H. | Macon, Bibb County | 10 | 1,000.00 |
| Central Trust Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 10 | 1,000.00 |
| Commercial & Savings Bank, a Georgia corporation having its principal office at | Macon, Bibb County | 631 | 63,100.00 |
| Dasher, Mrs. Anna L., Executrix of will of Arthur L. Dasher | Macon, Bibb County | 5 | 500.00 |
| Dent, J. Tom | Macon, Bibb County | 2 | 200.00 |
| Dunwody, J. Marion | Macon, Bibb County | 2 | 200.00 |
| Dunwody, Kenneth W. | Macon, Bibb County | 1 | 100.00 |
| Dunwody, W. Elliott | Macon, Bibb County | 1 | 100.00 |
| Dunwody, W. E. | Macon, Bibb County | 8 | 800.00 |
| Dure, Leon S. | Macon, Bibb County | 43 | 4,300.00 |
| Hart, J. Freeman | Macon, Bibb County | 5 | 500.00 |
| Hertwig, F. H. | Macon, Bibb County | 2 | 200.00 |
| Hightower, W. H. | Thomaston, Upson County | 5 | 500.00 |
| Hightower, R. E. | Thomaston, Upson County | 30 | 3,000.00 |
| Hinkle, A. B. | Macon, Bibb County | 10 | 1,000.00 |
| Hinton, J. C. | Macon, Bibb County | 10 | 1,000.00 |

| | | | | |
|---|---|---|---|---|
| 447 | Hubbel, Evelyn W. | Macon, Bibb County | 5 | 500.00 |
| | Hubbel, G. W. | Macon, Bibb County | 10 | 1,000.00 |
| | Jelks, T. M. | Macon, Bibb County | 25 | 2.500.00 |
| | Jelks, Mrs. T. M. | Macon, Bibb County | 2 | 200.00 |
| | Lane, Mrs. Hattie J. Extrx. of will of A. W. Lane | Macon, Bibb County | 30 | 3,000.00 |
| | Leak, Mrs. H. G. | Macon, Bibb County | 1 | 100.00 |
| | Macon Cooperage Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 1 | 100.00 |
| | Mallary, E. Y. | Macon, Bibb County | 10 | 1,000.00 |
| | Mallary, F. L. | Macon, Bibb County | 10 | 1,000.00 |
| | Middlebrooks, E. A. | Macon, Bibb County | 2 | 200.00 |
| | Minter, J. W. | Macon, Bibb County | 5 | 500.00 |
| | Morgan, Cecil | Macon, Bibb County | 50 | 5,000.00 |
| | Max Morris Drug Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 2 | 200.00 |
| | McEvoy Book and Stationery Company, a Georgia corporation, having its principal office at | Macon, Bibb County | 2 | 200.00 |
| | McKenna, W. A. | Macon, Bibb County | 2 | 200.00 |
| | Pace, Miss Meta Isabel | Macon, Bibb County | 5 | 500.00 |
| | Payne, J. W. | Macon, Bibb County | 10 | 1,000.00 |

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Pellow, L. E. | Macon, Bibb County | 1 | 100.00 |
| Mrs. Bessie N. Proudfit, Extrx. of the will of A. Proudfit, deceased | | | |

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| 448 Certificate standing in the name of A. Proudfit, the intestate | Macon, Bibb County | 10 | 1,000.00 |
| F. C. Ries, Jr., Administrator of the estate of F. C. Ries | Macon, Bibb County | 35 | 3,500.00 |
| Rahn, Mrs. H. G. | Dublin, Laurens Co. | 1 | 100.00 |
| Roush, W. A. | Macon, Bibb County | 10 | 1,000.00 |
| Roush, W. A. Agt. | Macon, Bibb County | 10 | 1,000.00 |
| Sams, A. J. | Macon, Bibb County | 5 | 500.00 |
| Sheridan, Ed. A. | Macon, Bibb County | 5 | 500.00 |
| Shorter, Mrs. Lizzie M. | Macon, Bibb County | 1 | 100.00 |
| Smith, Joel A. | Danville, Twiggs Co. | 10 | 1,000.00 |
| Smith, Miss Mary Lou | Jackson, Butts Co. | 3 | 300.00 |
| Smith, R. L. | Macon, Bibb County | 35 | 3,500.00 |
| Stafford, J. W. | Macon, Bibb County | 1 | 100.00 |
| Stafford, Mrs. Rubie | Barnsville, Pike Co. | 10 | 1,000.00 |
| Tindall, H. C. | Macon, Bibb County | 6 | 600.00 |
| Wells, W. D. | Macon, Bibb County | 1 | 100.00 |
| Wheeler, W. P. | Macon, Bibb County | 5 | 500.00 |
| Winburn, W. E. | Oglethorpe, | | |

| | | | |
|---|---|---|---|
| | Macon County | 5 | 500.00 |
| Williams, F. W. | Macon, Bibb County | 3 | 300.00 |
| Williams, P. H. | Macon, Bibb County | 3 | 300.00 |
| Wright, B. A. | Indian Springs, Butts County | 50 | 5,000.00 |

In the Eastern Division of the Southern District.

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Birdsey, A. H. | Savannah, Chatham County | 23 | $2,300.00 |
| Routzahn, R. G. | Savannah, Chatham County | 15 | 1,500.00 |

449 In the Northeastern Division of the Southern District.

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Howell, Queen V. (Col.) | Midville, Burke Co. | 8 | $800.00 |
| Irvin, Alexander | Washington, Wilkes County | 20 | 2,000.00 |

In the Southwestern Division of the Southern District.

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Lewis, John F. | Valdosta, Lowndes County | 200 | $20,000.00 |
| Little, W. A. | Douglas, Coffee Co. | 15 | 1,500.00 |
| Oglesby, Mrs. Lamar Lewis | Quitman, Brooks Co. | 50 | 5,000.00 |
| Thompson, Mrs. Charles | Valdosta, Lowndes County | 10 | 1,000.00 |

In the Northern District of Georgia.

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Anderson, N. Z. | Covington, Newton County | 40 | $4,000.00 |
| Cheatham, L. B. | Atlanta, Fulton Co. | 2 | 200.00 |
| Coon, J. S. | Atlanta, Fulton Co. | 15 | 1,500.00 |
| Cone, John F. | Atlanta, Fulton Co. | 30 | 3,000.00 |
| Dickerson, R. W. | McDonough, Henry County | 15 | 1,500.00 |
| Draper, Wallace | Atlanta, Fulton Co. | 1 | 100.00 |
| Draper, Jessie | Atlanta, Fulton Co. | 1 | 100.00 |
| Grant, Mrs. Annie Inman | Atlanta, Fulton Co. | 25 | 2,500.00 |
| Grant, John W. | Atlanta, Fulton Co. | 25 | 2,500.00 |
| Myers, W. T. | Jonesboro, Clayton County | 10 | 1,000.00 |
| North, Mrs. Mary D. | Newnan, Coweta Co. | 1 | 100.00 |

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| 450 Pullen, P. W. | McDonough, Henry County | 30 | 3,000.00 |
| Stewart, A. M. | East Point, Fulton County | 50 | 5,000.00 |
| Streyer, Miss Jessie P. | Lumpkins, Stewart Co. | 27 | 2,700.00 |
| Wilkins, J. J. | Athens, Clark County | 2 | 200.00 |

Shareholders Residing without the State of Georgia, but who have Appeared and Answered the Bill.

| Shareholder | P. O. Address. | No. Shares, | Amount. |
|---|---|---|---|
| Daniel, W. A. | 311 South Corona St., Denver Colorado | 28 | $2,800.00 |

It is further considered, ordered and decreed, that the plaintiff, the American National Bank of Macon, do have and recover of L. O. Benton, L. O. Benton & Brother, a firm composed of L. O. Benton and Eugene Benton, and of the said L. O. Benton and Eugene Benton individually, and of J. S. Malone, Jr., all of Monticello, Jasper County, Georgia, who were stockholders of the Southern Securities and Financing Company, a Georgia corporation now dissolved, the sum of Ten Thousand Three Hundred ($10,300.00) Dollars, being the amount of the liability on one hundred and three (103) shares of stock of the said Commercial National Bank of Macon owned by the Southern Securities and Financing Company at the time of its dissolution, with interest on said sum from this date at the rate of seven per cent (7%) per annum, the judgment against the said J. S. Malone, Jr., being limited to $900.00 of that sum.

It is further considered, ordered and decreed that executions issue against the said several named parties for the said respective amounts, upon application of the Plaintiff, or its solicitors.

It is further considered, ordered and decreed that J. N. Talley, Standing Master, be allowed the sum of Four Thousand Dollars in full compensation for his services rendered in said above stated case, and that said sum

be included and taxed as a part of the costs in
451 said cause, one-half against the plaintiff and one-half against the defendants.

It appearing that Seven Hundred and Sixty-five Dollars has been paid to J. W. Tolbert as his fees for stenographically reporting and transcribing the evidence taken on the hearing before the Master, the Plaintiff paying Three Hundred and Eighty-two and 50/100 Dollars of said sum, and the defendants Three Hundred and Eighty-two and 50/100 Dollars, it is considered, ordered and decreed that the said total sum be also included and taxed as a part of the costs in said cause, one-half against the plaintiff and one-half against the defendants.

It is further considered, ordered and decreed that the costs of suit, including the costs heretofore paid by the Plaintiff on the appeal be taxed against the Defendants and that the Plaintiff have execution therefor upon application.

It is further considered, ordered and decreed that the Plaintiff, the American National Bank of Macon, be authorized to institute such proceedings as it may be advised for the collection of the amounts due by the shareholders of the said Commercial National Bank of Macon who are non-residents of the State of Georgia.

It is further ordered that this cause be kept open as to any of the Defendants who may have died pending the suit and whose personal representatives have not been made parties, and that when the representatives of such deceased parties defendant shall have been made parties in accordance with the rules and practice in equity, that Plaintiff have leave on motion to enter a supplemental decree against such parties.

And it is so ordered and decreed this 3rd day of September, 1920.

BEVERLY D. EVANS,
U. S. Judge.

Leave is granted to the Defendants on October 4th, 1920, to move to apportion the cost among themselves. This 3rd day of September, 1920.

BEVERLY D. EVANS,
U. S. Judge.

Filed September 4, 1920. L. M. Erwin, Clerk.

452 STATEMENT OF THE EVIDENCE.

Complainant offered in evidence the articles of agreement for the liquidation of the Commercial National Bank. (This is the contract which is attached to the original bill in the case).

There was introduced by the Complainant the Minutes of the meeting of the Directors of the Commercial National Bank held August 1, 1914, as follows:

"Macon, Georgia, August 1, 1914. A call meeting of the Board of Directors was held in the Directors room of the Commercial National Bank, Macon, Ga., at 3:30 o'clock on the afternoon of August 1st. Those present at said meeting were E. Y. Mallary, E. D. Huguenin, A. W. Lane, Leon S. Dure, Cecil Morgan, C. M. Adams, J. J. Cobb, R. L. Smith, Oscar Bradley, E. N. Jelks, E. N. Lewis and W. T. Anderson.

On Motion of A. W. Lane the following resolution was unanimously adopted:

Resolved, that in the opinion of the Board of Directors of this Association is it expedient for this association to go into voluntary liquidation under sections 5220 and 5223 of the United States Revised Statutes, and that the officers of this association be and they are hereby directed to proceed under the by-laws to call a meeting of its stockholders to consider this question, and the consolidation of this association with the American National Bank of Macon, Ga., by the sale of its assets to the said bank;

Resolved, further, that the exigencies of the situation are such that in contemplation of the liquidation of this association as aforesaid, the Board of Directors
453 of this Association hereby authorize the officers of this association to transfer to the American National Bank of Macon, Ga., as cash, or as collateral for the notes of this association, all of the assets of this association, including cash, cash items, bills receivable, bonds, real estate, and personal property and choses in action of all kinds, which said assets are hereby transferred, assigned and delivered to the American National Bank of Macon, Ga., in order to fully protect and secure said bank for all moneys advanced or to be advanced by that bank under the assumption and payment of its deposits, bills payable, and other liabilities of this association, shown by the list of liabilities this day furnished by this association to said bank, said American National Bank of Macon, Ga., to take over the business of this association and to account to the shareholders of this association for any overplus which may remain after paying the indebtedness of this association in full and the expense of realizing on the assets so transferred, said bank to charge nothing for its services in so doing.

The officers and finance committee are hereby given full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers and committee, and the said officers and committee are further authorized to make such contract with said bank as may be necessary or appropriate hereunder.

It was moved and carried that the meeting of the stockholders of the Commercial National Bank should be called to assemble on the 12th day of August 1914, at 10:00 A. M., in the office of the bank building.

454 The following notice was ordered sent to each stockholder:

'To the stockholders of the Commercial National Bank of Macon, Georgia:

Notice is hereby given that a special meeting of the Stockholders of the Commercial National Bank of Macon will be held at its banking house in Macon, Georgia, at 10:00 A. M. on August 12th, 1914, and that the business proposed to be transacted at said meeting is the consolidation of this bank with the American National Bank of Macon, Georgia, by the sale of its assets to said American National Bank and the assumption of its liabilities in taking over its business by said bank, including the liquidation of said bank under sections 5220 and 5223 of the United States Revised Statutes.

By order of the Board of Directors,

Cashier.'

The cashier was also directed to accompany said official notice with an appropriate letter to the stockholders.

The meeting then adjourned.

E. N. LEWIS,
Cashier."

There was introduced by the complainant the Minutes, properly verified, of the stockholders meeting of August 12, 1914, which was held pursuant to the call of the Directors in the meeting of August 1, 1914, Supra, as follows:

"In pursuance of call issued August 1, 1914, the shareholders of the Commercial National Bank of Macon, Georgia, met in the Directors' Room of
455 the Commercial National Bank of Macon, Georgia, at 10:00 A. M., August 12, 1914, and adjourned to meet again at 11:15 o'clock A. M., August 12, 1914, in a hall on the second floor in premises known as 169 Cotton Avenue, Macon, Georgia, diagonally across the street from said Commercial National Bank Building.

G. S. DERRY,
Secretary.

At 11:15 o'clock A. M. August 12, 1914, the Shareholders of the Commercial National Bank of Macon, Georgia, assembled in a hall on second floor of premises known as No. 169 Cotton Avenue, Macon, Georgia, and upon motion duly seconded Mr. L. O. Benton was unanimously elected Chairman of the meeting.

The meeting having been called to order, Mr. G. S. Derry was elected Secretary.

The Chairman announced that the first order of business would be the naming of a committee on proxies. Messrs. W. T. Anderson, A. M. Stewart, and W. A. Dodson, were unanimously chosen as the committee on proxies.

Upon call of the roll the following stock was represented in person or by proxy:

| Name of Shareholder. Residence. | Name of Proxy | No. Shares. |
|---|---|---|
| C. M. Adams, Macon Ga. | | 10 |
| Dr. N. Z. Anderson, Covington, Ga. | A. M. Stewart | 40 |
| W. T. Anderson, Macon, Ga. | | 70 |
| C. H. Andrew, Macon, Ga. | | 8 |
| C. H. Anrdew, Trustee, Macon, Ga. | | 1 |
| Guy Armstrong, Macon, Ga. | E. P. Mallary | 20 |
| Atlantic National Fire Ins. Company, Macon, Ga. | J. J. McKay, Sec | 108 |
| C. J. F. Beno, Cincinnati, O. | A. M. Stewart | 35 |
| L. O. Benton, Monticello, Ga. | | 10 |
| L. O. Benton & Bro., Monticello, Ga. | | 25 |
| Oscar Bradley, Macon, Ga. | L. O. Benton | 45 |
| C. H. Brandon, Nashville, Tenn. | C. H. Andrew | 50 |
| L. H. Burghard, Macon, Ga. | | 10 |
| Central Trust Co., Macon, Ga. | G. S. Derry, Sec. | 10 |
| L. B. Cheatham, Atlanta, Ga. | | 2 |
| R. P. Christian, Macon, Ga. | E. P. Mallary | 10 |
| J. J. Cobb, Macon, Ga. | | 35 |
| J. J. Cobb, Agent, Macon, Ga. | | 1 |
| Commercial & Savings Bank, Macon, Ga. | E. Y. Mallary, P. | 631 |
| Mrs. G. C. Conn, Macon, Ga. | G. C. Conn | 2 |
| J. F. Cone, Atlanta, Ga. | John R. L. Smith | 30 |
| W. A. Daniel, Thomaston, Ga. | | 28 |
| A. L. Dasher, Macon, Ga. | | 5 |
| R. L. Davis, Monticello, Ga. | A. M. Stewart | 5 |

| | | |
|---|---|---|
| J. Tom Dent, Macon, Ga. | E. P. Mallary | 2 |
| J M. Dunwody, Macon, Ga. | | 2 |
| W. Eliott Dunwody, Jr. Macon, Ga. | E. W. Stetson | 1 |
| W. E. Dunwody, Macon, Ga. | | 8 |
| Leon S. Dure, Macon, Ga. | | 43 |
| Claude Estes, Macon, Ga. | | 2 |
| Herbert F. Haley, Macon, Ga. | | 25 |
| J. Freeman Hart, Macon, Ga. | E. P. Mallary | 5 |
| J. H. Hertwig, Macon, Ga. | | 2 |
| W. H. Hightower, Thomaston, Ga. | | 5 |
| R. E. Hightower, Thomaston, Ga. | W. H. Hightower | 30 |
| A. B. Hinkle, Macon, Ga. | | 10 |
| J. C. Hinton, Macon, Ga. | | 10 |
| Evelyn W. Hubbel, Macon, Ga. | Geo. W. Hubbel | 5 |
| G. W. Hubbel, Macon, Ga | | 10 |
| E. D. Huguenin, Macon, Ga. | L. H. Burghard | 10 |
| Alex Irvin, Washington, Ga. | | 20 |
| E. N. Jelks, Macon, Ga. | E. P. Mallary | 25 |
| T. M. Jelks, Macon, Ga. | E. P. Mallary | 25 |
| Mrs. T. M. Jelks, Macon, Ga. | E. P. Mallary | 2 |
| J. L. Jessup, Macon, Ga. | | 10 |
| A. W. Lane, Macon, Ga. | | 30 |
| E. N. Lewis, Macon, Ga. | | 131 |
| John F. Lewis, Valdosta, Ga. | | 200 |
| Macon Cooperage Co., Macon, Ga. | Geo. W. Hubbel | 1 |
| E. Y. Mallary, Macon, Ga. | | 10 |
| F. L. Mallary, Macon, Ga. | E. P. Mallary | 10 |
| E. A. Middlebrooks, Macon, Ga. | | 2 |
| Cecil Morgan, Macon, Ga. | E. P. Mallary | 50 |
| J. Dudley Morgan, Washington, D. C. | E. P. Mallary | 5 |
| W. A. McKenna, Macon, Ga. | E. P. Mallary | 2 |
| Anna Duhme Newstedt, Cincinnati, O. | A. M. Stewart | 20 |

| | | |
|---|---|---|
| Mrs. Lamar L. Oglesby, Quitman, Ga. | C. B. Lewis | 50 |
| Miss Meta Isabella Pace, Macon, Ga. | V. Otis Robertson | 5 |
| T. C. Parker, Macon, Ga. | | 150 |
| A. L. Patterson, New Orleans, | E. P. Mallary | 50 |
| A. L. Patterson, Pres., New Orleans, | E. P. Mallary | 67 |
| | | 10 |
| J. W. Payne, Macon, Ga. | A. M. Stewart | 30 |
| P. W. Pullin, McDonough, Ga. | | 35 |
| F. C. Ries, Macon, Ga. | | 15 |
| W. A. Roush, Macon, Ga. | Geo. W. Hubbel | 10 |
| W. A. Roush, Agt., Macon, Ga. | Geo. W. Hubbel | 10 |
| R. G. Routzham, Knoxville, Tenn. | | 5 |
| A. J. Sams, Macon, Ga. | | |
| Joel A. Smith, Danville, Ga. | | 10 |
| R. L. Smith, Macon, Ga. | | 35 |
| Southern Security & Financing Company, Monticello, Ga. | L. O. Benton | 103 |
| J. W. Stafford, Macon, Ga. | | 1 |
| A. M. Stewart, McDonough, Ga. | | 50 |
| P. D. Todd, Macon, Ga. | | 15 |
| W. P. Wheeler, Macon, Ga. | | 5 |
| P. W. Williams, Macon, Ga. | | 3 |
| P. H. Williams, Macon, Ga. | | 3 |
| B. A. Wright, Indian Springs, Ga. | | 50 |
| | Total | 2616 |

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It having been ascertained that the required number of shares were represented in person, or by proxy, Mr. W. A. Lane offered the following resolution:

"Resolved, That the action of the Board of Directors of this bank contained in a resolution adopted by said Board of Directors on August 1st, 1914, transferring and assigning the assets of this association unto the American National Bank, and providing for the voluntary liquidation of this association, said resolution appearing on the minutes of the Board of Directors on August 1st, 1914, be and the same is hereby in all respects ratified and approved by the shareholders of this association,

Resolved further, That a certain contract entered into between this association and the American National Bank by the respective officers of said associations dated August 11th, 1914, pursuant to the resolution of the Board of Directors aforesaid, be and the same is hereby in all respects ratified and approved.

Seconded by Mr. W. T. Anderson."

Mr. Lane stated that before discussion under his motion, he thought it proper to read to the shareholders the contract entered into by and between the Commercial National Bank of Macon, Georgia, and the American National Bank of Macon, Georgia, under date of August 11th, 1914, and specifically referred to in the second paragraph of his resolution. The con-

458 tract was then read in full by Mr. Lane.

Mr. W. A. Dodson, attorney for Mr. John F. Lewis, stated that before voting on this motion he thought there was some information to which the shareholders were entitled. That he was glad an auditor had been

appointed, but that the shareholders should be advised a little further as to the condition of affairs. That some of the shareholders would like to know what is the real value of the assets of the Commercial National Bank. Mr. Dodson then suggested that a report be made by the officers of the Commercial National Bank as to the condition of the bank.

Mr. Lane stated that there was no objection on his part to the officers making report as requested.

Dr. A. B. Hinkle stated that he did not see what reference a report from the officers could have to the contract made by them with the American National Bank.

Mr. John R. L. Smith stated that he did not see that hearing from the officers of the bank was going to do any good, as they very probably could not give details without reference to the books.

Mr. W. T. Anderson stated that he did not assume any responsibility, nor did he champion the cause of the officers, or anybody else. That he recognized merit in Mr. Dodson's point that the stockholders were interested in all information they could get. That he was therefore going to try to give the information from an unbiased standpoint. Mr. Anderson then made the following statement:

"About two months ago the bank examiner, Mr. Higgins, was here representing the Government, and he had certain criticisms to make of the bank and its management. Mr. Higgins told me that it would be absolutely necessary to have some action taken to insure
459 the bank's traveling. We walked around awhile and finally parted company at 12:30 o'clock that night. Mr. Higgins finally made me this proposition: if you and Mr. Dure will take active charge of the

finances and handle the details of the bank I will consent for it to go on under your management. I asked if any liability would be incurred to depositors in keeping the bank open. He stated that he did not think so, and expressed the opinion that the depositors were perfectly safe. I said that with that understanding I would see Mr. Dure and make arrangements to take charge. We took charge with the consent of the officers and before a meeting of Directors it was announced that Dure and I would take charge. We found the bank had overloaned and we were unable to get in enough money on these loans to carry on business. Bad matters got worse. Exchanges were held up on Georgia banks, and remittances not gotten out promptly. These requests for remittances came faster and faster, and finally withdrawals by the banks. The drain came stronger than we could take care of. Rumors got afloat. We found the American National Bank kindly disposed, and we got the officers to go down and talk to American National officials and arrange to have them taken over. We thought that if we could do anything to save a run and Court costs it would save money for depositors and stockholders, and protect the business interests of the city. Arrangements were therefore made to have the bank taken over as Mr. Lane has stated.

"Mr. Taylor, Mr. Hillyer, Mr. Scott and Mr. Park passed upon each paper as it was presented, taking the statements of officials as to what was behind them, and accepting their statements as true. Our analysis of the assets under the hurried state of affairs,
460 they put down $260,000.00, according to my recollection, of prime paper. They put down $220,000.00 as what they called No. 2. By that they meant they could not realize upon it immediately. My further recollection is that there was about $660,000.00,

or $670,000.00 of No. 3. Mr. Taylor repeatedly stated that he did not consider No. 3 doubtful, but that it was paper he could not borrow on in New York city, so he discounted the No. 3 paper down to a 33-1/3% basis, but the assets over the liabilities figured, according to my recollection, about $443,000.00, and that was the margin on which they took it, backed by the additional liability of the stockholders. Mr. Taylor stated he wanted the stockholders, in their meeting, to appoint a committee to work with him, to actively handle with him the affairs of the Commercial National in liquidating its assets."

Mr. V. O. Robertson stated he considered this contract, as read by Mr. Lane, an exceptionally fair one to the stockholders and depositors. That he heartily agreed with Mr. Dodson that the minority stockholder is entitled to information and that the majority stockholder, or officer, that withholds information is not doing his duty to the stockholders.

Mr. Dodson stated that Mr. Anderson had given what information he could, and that he would therefore suggest that for the present Mr. Lane's motion be withdrawn, and made a motion that a certain committee of stockholders be appointed to look after the interest of the stockholders in the event the previous action of the directors should be subsequently approved, and the contract with the American National Bank agreed to.

Mr. Lane stated that he was inclined to the opinion that any resolution Mr. Dodson might wish to have passed by the stockholders ought to be acted upon separately. That the original contract with the
461 American National Bank provided for a committee of three, but that this provision had to

be eliminated as it was found to be in conflict with the printed form of resolution received from the Department at Washington.

Mr. Robertson made the suggestion that the printed form of resolution sent out by the Department could be adopted at this time, and suggested a resolution looking to its adoption, and then immediately thereafter, by common consent, passing a resolution about as follows: "Whereas the foregoing resolution has been adopted, now, therefore, we, the stockholders agree that the chair name a committee of three to five, with the request that the directors confer with them in handling the matter of liquidation with the American National Bank."

Mr. Lane called for the previous question, and upon a vote of the shareholders his resolution approving the action of the Board of Directors on August 1, 1914, and ratifying and confirming the contract entered into by this bank with the American National Bank, under date of August 11th, 1914, was unanimously carried.

Mr. Lane then offered the following resolution:

"Resolved, That the Commercial National Bank be placed in voluntary liquidation under the provisions of sections 5220 and 5221 of the United States Revised Statutes, to take effect at the close of business on August 1st, 1914, and that American National Bank of Macon, Georgia, be appointed liquidating agent of said bank; that liquidation shall be conducted in accordance with law, and under supervision of the Board of Directors, who shall require a suitable bond to be given by said agent in an amount to be fixed by the Board of Directors; that the said liquidating agent shall render quarterly reports to the Comptroller of the Cur-

rency on the 1st of January, April, July and October of each year, showing the progress of said li-
462 quidation, until said liquidation is completed; that said liquidating agent shall render an annual report to the shareholders on the date fixed in the Articles of Association for said annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the Liquidating Agent and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank, and at said meeting the shareholders may, by a vote of the majority of the stock, remove the liquidating agent; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied; and the national bank examiner will be compensated for his time and expense in making the examination in question."

Seconded by Mr. W. T. Anderson and without further discussion unanimously adopted.

Mr. Haley stated that it would be a wise idea to have the audit of Alonzo Richardson & Company placed with the stockholders, and include the agreement with the American National Bank.

It was pointed out to Mr. Haley that in the case of the Exchange of Macon the stockholders had to pay about $25.00 per copy for the auditors' report, and that on the same basis it would be too expensive to try to place a copy of the audit in the hands of each stockholder.

Mr. Haley received assurance, however, that any of the stockholders could have access to the report of the auditors now at work on the books of the Commercial National Bank as soon as their report had been completed and submitted.

Mr. V. O. Robertson then offered the following resolution:

"Whereas, the stockholders have passed a resolution appointing the American National Bank of
463 Macon, Georgia, liquidating agent of this bank as requested by the Comptroller of the United States,

Now, therefore, be it resolved that this meeting appoint L. O. Benton, J. F. Lewis, Leon S. Dure, W. T. Anderson, and John J. McKay a special committee of five, who shall serve as a special stockholders' committee, representing the stockholders, whose duty it shall be to serve with the Board of Directors, and who shall be consulted before any final action is taken by the Board of Directors on all matters relating to the said liquidation by the said American National Bank. Compensation to be later determined by the Board of Directors."

Seconded by A. L. Dasheer.

Mr. Dure stated: "From personal knowledge of a great many assets of the Commercial National Bank I know it is to the best interest of the stockholders that this committee be paid, as that will be cheapest in the end, as a great many of the assets will require study in order to work out best results. This committee will have a great deal to do, and I say that they should be paid and required to give proper attention to the work."

There being no further discussion a vote was taken and Mr. Robertson's motion unanimously adopted.

There being no further business, meeting adjourned.

G. S. DERRY, Secretary."

Complainant introduced the Minutes of the special meeting of the Directors of the Commercial National Bank, held August 12, 1914, as follows:

"A special meeting of the Directors of the Commercial National Bank of Macon was held August
464 12, 1914.

Those present were Messrs. E. Y. Mallary, J. J. Cobb, F. C. Ries, R. L. Smith, Oscar Bradley, Leon S. Dure, L. O. Benton, C. M. Adams, W. T. Anderson, T. C. Parker, A. W. Lane, and E. N. Lewis, along with the following stockholders' committee, John F. Lewis and John J. McKay.

On motion of A. W. Lane the following resolution was adopted:

"Resolved, that the Treasurer of the United States be, and he is hereby, authorized to withdraw $50,000.00 U. S. Bonds, held for account of this bank as security for public moneys, and described as follows:

$25,000.00 of the Loan of 3% 1908-18, June 20, 1911.
$25,000.00 of the Loan of 3% 1908-18, June 30, 1911.

and that the Treasurer of the United States be, and is hereby, authorized to assign and transfer the same to the Treasurer of the United States in trust for American National Bank of Macon, which association assumes the liabilities of the said Commercial National Bank

of Macon, including the public moneys deposited with said Commercial National Bank."

On motion of A. W. Lane the following resolution was adopted:

"Resolved, That the Comptroller of the Currency be, and he is hereby, authorized to withdraw $200,000.00 U. S. Bonds deposited with the Treasurer of the United States by this bank to secure circulation, and described as follows:

$35,000.00 of the loan of Consols of 1930, August 1, 1908.

$15,000.00 of the loan of Consols of 1930, October 27, 1908.

$25,000.00 of the loan of Concols of 1930, November 10, 1908.

$30,000.00 of the loan of Consols of 1930, January 5, 1909.

$25,000.00 of the loan of Consols of 1930, June 12, 1911.

$25,000.00 of the loan of Consols of 1930, June 14, 1911.

$20,000.00 of the loan of Panama Canal Loan of 1918-38, January 5, 1909.

$25,000 of the loan of Panama Canal Loan
465 of 1916-36, March 12, 1909.

and that the Treasurer of the United States be, and is hereby authorized to assign and transfer the same, to the Treasurer of the United States in trust for the American National Bank of Macon, which association assumes liabilities of the said Commercial National Bank of Macon, including the redemption of its circulating notes (section 5223 U. S. R. S.)".

On motion of Leon S. Dure, it was ordered that a meeting of the directors of this bank be later called for the purpose of allowing fees to the stockholders' committee of five members.

On motion of W. T. Anderson, the following resolution was passed:

"Resolved, That the Directors having heard the resolution of the stockholders, that they hereby instruct the committee of five, as follows: W. T. Anderson, Leon S. Dure, John F. Lewis, L. O. Benton and John J. McKay, to proceed at once to conserve the interests of the stockholders in every way that they can."

On motion meeting adjourned.

E. N. LEWIS, Cashier."

There was introduced by the complainant the Minutes of a special meeting of the Board of Directors of the Commercial National Bank, held August 24, 1914, as follows:

"A special meeting of the Directors of the Commercial National Bank of Macon was held at the Bank's building August 24, 1914. Those present were: Messrs. J. J. Cobb, E. N. Jelks, A. W. Lane, C. M. Adams, R. L. Smith, W. T. Anderson, Oscar Bradley, Leon S. Dure, T. C. Parker and E. N. Lewis.

On motion of A. W. Lane, seconded by R. L. Smith, the following resolution was unanimously adopted:

'Whereas, the meeting of the stockholders of the Commercial National Bank, held on August 12th, was not

called as provided by the Articles of Associa-
466 tion which require thirty days' notice, and,

Whereas, it is necessary that another meeting of the stockholders be called after thirty days' notice,

Therefore, be it resolved that a meeting of the Stockholders of the Commercial National Bank be and the same is hereby called to assemble on the 30th day of September, 1914, at eleven o'clock A. M. in the Commercial National Bank Building.

Be it further resolved, that the following notice of said meeting shall be sent to each stockholder:

'To the Stockholders of the Commercial National Bank of Macon, Georgia:

Notice is hereby given that a special meeting of the stockholders of the Commercial National Bank of Macon will be held at its banking house in Macon, Georgia, at 11 o'clock A. M. on September 30th, 1914. The business proposed to be transacted at said meeting is the consolidation of the Commercial National Bank with the American National Bank of Macon, Georgia, by the sale of its assets to said American National Bank and the assumption of its liabilities to depositors and creditors in taking over the business of said Commercial National Bank, including the liquidation of said bank under sections 5220 and 5223 of the United States Revised Statutes.

By order of the Board of Directors.

E. N. LEWIS, Cashier.'

Be it further resolved that the cashier is hereby directed to accompany said official notice with appropriate letter of explanation to the stockholder.'

After discussion, meeting on motion adjourned.

E. N. LEWIS, Cashier."

467 There was introduced by the Complainant the Minutes of the Directors of the Commercial National Bank meeting, held on September 29, 1914, as follows:

"Macon, Georgia, September 29th, 1914.

The directors held a special meeting upon this date in the Commercial National Bank building. Mr. J. J. Cobb, vice-president, acted as chairman, and A. W. Lane, in the absence of the cashier, was requested to act as secretary.

The following directors were present: C. M. Adams, L. O. Benton, Oscar Bradley, J. J. Cobb, A. W. Lane, R. L. Smith, Leon S. Duree, T. C. Parker and F. C. Ries.

The chairman stated that the special meeting had been called at the request of Mr. Benton, Mr. Benton stated that he thought it would be well for the directors to have this call meeting before final liquidation of the bank, and that the directors could discuss the matters to come before the stockholders' meeting on the 30th. Mr. Adams stated that in his opinion the stockholders should do what they started out to do, and ratify the action of the directors in merging the bank with the American National Bank.

Mr. Benton stated that he desired an additional examination of the affairs of the bank in order to classify the assets and in order to be able to determine which were good and which were bad and also to trace each individual loan to its beginning. He further stated that it was his purpose to ask the stockholders to give him the authority to have this examination made. When this was done he was ready to quit, but was opposed

to ratification until the examination had been made which they had been endeavoring to get. It was explained by Mr. Dure, chairman of the stockholders' committee, that the examination had been made by Alonzo Richardson & Company, certified public accountants, and a copy of the same was now in the hands of
468 the committee. There was some discussion by numerous directors as to the examination mentioned, however, no final action was requested of the directors on the subject and no action taken, it being explained by Mr. Benton that he desired to ask authority of the stockholders.

It was moved and carried that no officer of this bank should draw any salary as such officer from August 1, 1914, except such as were retained by the American National Bank in liquidating the business of this bank.

It was brought to the notice of the directors that Mr. A. S. Birdsey, a stockholder, had filed in the Superior Court of Bibb County, a petition for receiver. It was moved and carried unanimously that the counsel for the bank file answer to this suit, and that the bank and its directors through counsel vigorously resist the application for receiver in the interest of depositors, creditors and stockholders, and that counsel for the bank was so instructed with reference to the Birdsey suit, and said instructions should apply to any other suit or application that might be made for a receiver.

There being no further business meeting adjourned.

J. J. COBB, Vice-President,
A. W. LANE, Secretary."

There was introduced by the complainant the Minutes of the stockholders' meeting of the Commercial National Bank, held September 30, 1914, as follows:

Macon, Georgia, September 30, 1914.

The stockholders of the Commercial National Bank in answer to the notice regularly issued, convening said meeting, met on this the 30th day of September, 1914.

Upon motion, W. T. Anderson was duly elected as chairman of the stockholders' meeting, and Mr. John J. McKay, as Secretary.

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The chair stated that the first business before the stockholders was to ascertain how much stock was represented by person and by proxy.

The chair appointed A. L. Dasher, C. H. Andrew and J. L. Jessup as tellers to ascertain the number of stockholders present and represented by proxy. The list of stockholders was duly called and upon the report of said committee it appeared that there were present at said meeting, upon said roll call of stockholders, in person and by proxy twenty-six hundred and eighty-four shares of the stock of the Commercial National Bank, out of a total of three thousand shares.

Those present in person or by proxy being as follows: (here appears a list containing the names of all stockholders present at said meeting, together with their residence and the number of shares owned by each; and if represented by proxy the name of the proxy)—total stock represented in person and by proxy 2684 shares.

The chair then stated briefly the object of the meeting and declared the same open and ready for the transaction of business for which said meeting had been convened.

The notice of the meeting, sent out through the cashier of the bank, under a resolution of the board of directors, on August 25th, 1914, stated that the stockholders would convene in the banking house of the Commercial National Bank. The quarters in said building

being somewhat inadequate for the meeting, the same was adjourned to the hall known as No. 169 Cotton Avenue, diagonally across the street from the said Commercial Bank Building. Upon motion, it was unanimously carried that the meeting of the stockholders be held in said hall, instead of the directors' room of said bank building.

Mr. A. W. Lane offered the following reso-
470 lution:

'Whereas, The Board of Directors of this association by resolution adopted on August 1, 1914, transferred and assigned to the American National Bank all the assets of this Association as security for the liabilities of this association which were assumed by the said American National Bank, said resolutions being passed in contemplation of the voluntary liquidation of this Association under the provisions of Sections 5220 and 5221 of U. S. Revised Statutes; and

Whereas, on August 11th, 1914, a contract between this Association and the said American National Bank, signed by the respective officers of said Association, was duly entered into, said contract being made pursuant to the resolution of the Board of Directors aforesaid; and

Whereas, on August 12, 1914, a special meeting of the shareholders of this Association was held at the banking house of the Association in the City of Macon, at which meeting stockholders representing 2616 shares were present in present in person and by proxy and at which meeting a resolution was unanimously passed ratifying and approving the action of the Board of Direc-

tors in transferring the assets of this Association to the American National Bank as aforesaid, and ratifying and approving the contract between the two Associations dated August 11th, 1914; and

Whereas, said meeting of stockholders was not called and held in accordance with the articles of Association, in that only ten days' notice of said meeting was given instead of thirty days, as required by said Articles of Association; and

Whereas, this meeting of stockholders has been called in accordance with the Articles of Association and after thirty days notice as provided in said Articles
471 of Association, for the purpose of ratifying the action of the previous meeting, and of taking appropriate action looking to the voluntary liquidation of this Association;

Therefore, Resolved: That the action of the Board of Directors of this Association as contained and set forth in the resolution adopted by said Board on August 1st, 1914, transferring and assigning the assets of this Association to the American National Bank of Macon, said resolution appearing on the minutes of said Board of Directors on August 1st, 1914, be and the same is hereby in all respects ratified and approved by the shareholders of this association;

Resolved, further, that the contract between this Association and the American National Bank of Macon, signed by their respective officers, and dated August 11th, 1914, said contract having been made pursuant to the resolution of the Board of Directors aforesaid, be and the same is hereby in all respects ratified and approved;

Resolved further, that the action of the special meeting of stockholders approving said resolution of the Board of Directors and the contract aforesaid and providing for the voluntary liquidation of this Association under Sections 5220 and 5221 of the United States Revised Statutes, be and the same is hereby in all respects ratified and approved.'

The foregoing resolution was adopted by the following votes representing more than two-thirds of the capital stock of the Association, no director, other official or employee having acted as proxy. The total number of shares voted in favor of said resolution are as follows, to-wit: (here appears in the minutes a list of names of shareholders, together with the number of shares voted by each, and where voted by proxy the name of the proxy is given). Total stock voted in favor of said resolution, 2059 shares.

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The vote against said resolution was as follows: (here follows a list of names of shareholders, together with the amount of stock voted by each, and where the stock was voted by proxy the name of the proxy is given). Total stock voted against said resolution, 603 shares.

Stock represented in person or by proxy and not voting for or against said resolution, as follows: (here appears in the minutes the names of three shareholders, with the number of shares of stock owned by each). Total 22 shares.

The following resolution for voluntary liquidation was offered by A. W. Lane:

'At a meeting of the shareholders of the Commercial National Bank of Macon, located at Macon, State of

Georgia, held on September 30th, 1914, thirty days' notice of the proposed business having been given, it was resolved, That the Commercial National Bank be placed in voluntary liquidation under the provisions of Section 5220 and 5221 of the United States Revised Statutes, to take effect upon this date, and that the American National Bank of Macon, Georgia, be appointed liquidating agent of said bank; that liquidation shall be conducted in accordance with law and under the supervision of the Board of Directors, who shall require a suitable bond to be given by the said agent in an amount to be fixed by the Board of Directors; that the said liquidating agent shall render quarterly reports to the Comptroller of the Currency on the 1st of January, April, July and October of each year, showing the progress of said liquidation until said liquidation is completed; that said liquidating agent or committee shall render an annual report to the share-
473 holders on the date fixed in the Articles of Association for said annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent, and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank, and at said meeting the shareholders may, by a vote of the majority of the stock, remove the liquidating agent; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied and that the national bank examiner will be compensated for his time and expense in making the examination in question.'

The foregoing resolution was adopted by the following vote, representing at least two-thirds of the capital stock of the Association, no director, other officer, or employee having acted as proxy. The total number of shares voted in favor of said resolution are as follows, to-wit: (here appears in the minutes a list of stockholders voting, with the number of shares voted by each, and where voted by proxy the name of the person acting as proxy.) Total stock voted in favor of said resolution, 2059 shares.

The vote against said resolution was as follows: (here appears in the minutes a list of stockholders voting against the resolution with the amount of stock voted by each, and where the stock was voted by a proxy the name of the person acting as proxy.) Total stock voted against said resolution, 603 shares.

Stock represented in person or by proxy, and not voting for or against said resolution, as follows: (here appears in the minutes the names of three share-
474 holders, with the amount of stock owned by each)—Total 22 shares.

Mr. C. H. Andrew moved that the committee of five stockholders of the Commercial National Bank of Macon, consisting of Leon S. Dure, W. T. Anderson, John F. Lewis, John J. McKay and L. O. Benton be appointed to act with the Directors of the said Commercial National Bank and with the American National Bank of Macon in liquidating the assets of said Commercial National Bank, and that the Directors of said bank take no final action in the matter of liquidation, without consulting with said committee.

Motion was duly seconded and unanimously passed.

L. H. Burghard moved that a special committee of three stockholders be appointed by the chair to investigate the duties of said stockholders' committee of five

and report at the January meeting to said stockholders their recommendation as to proper compensation.

The motion was duly seconded and unanimously carried, and the following committee appointed by the chair; L. H. Burghard, C. H. Andrew and A. L. Dasher.

Motion of L. O. Benton that an additional audit of the affairs of the business of the Commercial National Bank be made and copies supplied to the stockholders provided the cost should not exceed fifteen hundred dollars ($1,500.00) was duly seconded. There was discussion by numerous stockholders for and against this motion and upon vote upon the question four hundred and eighty-one shares of stock were voted for the motion and twelve hundred and fifty-seven shares against the motion, and the same was therefore declared lost.

There being no further business, the meeting adjourned.

JOHN J. McKAY, Secretary."

475 I, E. N. Lewis, hereby certify under authority of the Board of Directors that the foregoing is a true and correct report of the vote and of the resolutions adopted at a meeting of the shareholders of the aforesaid bank on the date mentioned; and is a true and correct copy of the minutes of said meeting.

E. N. LEWIS, Cashier.

Sworn to and subscribed before me, this 3rd day of October, 1914."

N. C. TURPIN, N. P. B. C. Ga."

There was introduced by the complainant the Minutes of the Directors' meeting of the Commercial National Bank of November 10th, 1914, as follows:

"Macon, Georgia, November 10th, 1914.

A meeting of the Board of Directors of the Commercial National Bank was held in the Commercial Bank building, there being present the following: E. Y. Mallary, A. W. Lane, W. T. Anderson, Oscar Bradley, F. C. Ries, R. L. Smith, L. O. Benton, L. S. Dure, J. J. Cobb. Mr. E. Y. Mallary, the president, presided over the meeting, and, upon motion, Mr. J. J. Cobb was duly elected to act as secretary in the absence of the cashier, Mr. E. N. Lewis.

Mr. L. S. Dure submitted a contract between the Capital Savings Bank and the Central Trust Company and the Commercial National Bank, dated November 4th, 1914, and executed by said respective parties. The contract was read over to the meeting.

Upon motion the following resolution was passed:

'Resolved, That the contract between the Capital Savings Bank, the Central Trust Company and this Association, dated November 4th, 1914, and signed on behalf of this Association by the American National
476 Bank as liquidating agent, by the terms of which this Association acquires as security for the indebtedness of the Capitol bank certain real estate installment notes, and surrenders its second claim upon one hundred and seventy-seven (177) shares of the Trust Company stock, which said contract was negotiated with the consent and approval of the stockholders' committee, be and the same is in all respects fully ratified and approved; a copy of which said contract is hereto attached and made a part of this resolution.'

L. O. Benton, upon his request, was recorded as not voting for or against the resolution, as was also F. C. Ries. Mr. L. S. Dure also, upon his request, was ex-

cused from voting on the resolution because of his connection with the Central Trust Company, but stated that in his opinion the contract was in all respects desirable from the standpoint of the interests of the Commercial National Bank.

Mr. L. S. Dure also submitted the contract between the Central Trust Company and the Commercial National Bank, dated October 24th, 1914, and duly executed by the said respective parties.

Upon motion the following resolution was passed:

'Resolved, That the contract between the Central Trust Company and this Association, dated 24th day of October, 1914, signed on behalf of this Association by J. J. Cobb, Vice-President, and E. N. Lewis, Cashier, by the terms of which this Association surrenders to the Trust Company all notes and other claims which it held against the Security Investment Company, including its interest in the bonds of said company, and in consideration thereof the said Trust Company surrenders to this Association all its claims against the Beechwood Farms Company, including its claims to the bonds of said company and certain other notes and claims against
477 T. C. Parker, which said contract was negotiated by the consent and approval of the stockholders' committee and also of the American National Bank of Macon, liquidating agent, be ratified and approved in all respects; a copy of which said contract is hereto attached and made a part of this resolution.'

Mr. L. O. Benton and Mr. F. C. Ries, upon request, were recorded as voting against this resolution. Mr. L. S. Dure, upon his request, was excused from voting upon the resolution because of his connection with the Central Trust Company.

It was explained fully to the meeting by Mr. W. T. Anderson and Mr. L. S. Dure, who are members of the stockholders' committee, that in their opinion the contract was to the interest of the Commercial National Bank.

It was also stated to the meeting that the American National Bank, after full investigation through its officers, and after conference with the stockholders' committee, approved the contract submitted, as was the case also with the contract above referred to touching the settlement with the Capitol Savings Bank as set out in the resolution with reference thereto.

Mr. A. W. Lane called attention to the fact that the American National Bank had not executed a bond as liquidating agent and the resolution submitted by the Department with reference to liquidation appeared to require that bond be given. A resolution was offered fixing the bond at twenty-five thousand ($25,000.00) dollars. After some discussion, this matter was referred to Mr. A. W. Lane, as counsel for the bank, with instructions to look into the matter, and, if the bond was required, he was authorized and instructed to see that bond in the sum of $25,000.00 was executed in compliance with the regulations with reference to such matters. The bond was not fixed at any larger
478 amount because of the expense to this bank, and because of the strength and financial responsibility of the American National Bank.

A. W. Lane submitted to the meeting the bond of the cashier and other employees. After some discussion no action was taken thereon or any proceedings authorized with reference thereto by the Board of Directors.

Upon motion, the following resolution was unanimously passed relative to the payment of counsel's fees, as therein stated:

Whereas the condition of the affairs of this bank since August 1st have required much attention at the hands of A. W. Lane, its counsel, and also of Hardeman, Jones, Park & Johnston, attorneys for the American National Bank as liquidating agent, two suits for receiver having been filed, one in Superior Court by A. S. Birdsey and which is soon to be argued in the Supreme Court of the State of Georgia, and one by A. L. Patterson and J. W. Payne in the District Court of the United States for the appointment of a receiver and which is to be heard on December 2nd, each of the suits being against this bank and its directors and also against the American National Bank, transferee of the assets of the bank, and whereas the services of counsel are necessary in these important matters as well as in other numerous matters affecting the interests of the bank,

Therefore, be it resolved by the Board of Directors of the Commercial National Bank that the sum of twenty-five hundred ($2,500.00) dollars be paid to Messrs. Jordan & Lane, and the sum of twenty-five hundred dollars ($2,500.00) to Messrs. Hardeman, Jones, Park & Johnston on account.

479 Resolved further, that the American National Bank be, and the same is hereby, requested to make payment of said sums to said counsel above named."

Mr. L. O. Benton submitted a list of customers who had previously made loans from the bank, the original list submitted by Mr. Benton being the following:

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| T. C. Parker | J. L. Jessup Agency |
| | J. L. Jessup Trust Company |
| | W. P. Wheeler |
| J. L. Jessup | Security Investment Company |
| | Beechwood Farms Company |
| | Parker Quarries Company |
| | Parker Frohock Tie Company |
| | Parker Tie Company |
| | Parker Railway News Company |
| | Lake Jackson Lumber Company (out of bus. 4 yrs.) |
| | Ga. Pulp & Paper Mfg. Co. |
| | Farrish Brick Company |
| | Hall-Parker Contracting Company |
| | Standard Turpentine & Wood Pulp Co. |
| F. L. Mallary | Jelks Brick Company |
| | T. M. Jelks |
| E. N. Jelks | Taylor Boiler Works (imaginary or fictitious) |
| | W. H. Roper |
| | C. F. Smith, |
| | Geo. W. Barnes |
| | Mallary Mill Supply Co. |
| | Mallary-Taylor Mills Supply Co. |
| | Mallary Bros. Company |
| Jesse H. Hall | Hall-Parker Contracting Co. |
| 480 | Macon Realty Insurance & Investment Co. |
| J. H. Virgin | |

Georgia Kaolin Company
F. A. Guttenberger Company
W. B. Daniel (collateral Eagle River Mining bonds)
A. L. Patterson
A. L. Patterson, President
E. L. Martin $6,504.91
E. L. Martin and Mrs. Emma T. Martin $6,712.00

Security Loan & Abstract Company
Central Trust Company
Commercial & Savings Bank
Southland Knitting Mills (signed by secretary)
George S. Derry
Empire Life Insurance Company.

Mr. Benton stated that as a Director he desired to disapprove this list of loans. Mr. F. C. Ries joined in this disapproval, as did also Mr. R. L. Smith. Mr. Benton also stated that he mentioned at the last meeting that he desired to disapprove certain loans but did not have a list of same with him. Upon motion Mr. Benton was allowed to file the list above stated with the secretary at this meeting.

Upon motion it was unanimously carried that the sum of two hundred and ninety-one ($291.50) dollars fifty cents be paid to Mr. W. T. Anderson and the sum of three hundred and ten ($310.00) dollars to Mr. L. S. Dure as compensation for their services on the finance committee up to the 1st of August, 1914. The sum of eighteen ($18.50) dollars and fifty cents in
481 the item for Mr. Dure was for expenses paid by him for a trip to Savannah in connection with the loans to Mr. T. C. Parker. The compensation above mentioned was authorized by the Board of Directors at their meeting in June when it became necessary to require special services of the finance committee.

Upon motion, the American National Bank was requested to make payment of the two items named to Mr. Dure and Mr. Anderson.

There being no further business, the meeting adjourned.

J. J. COBB, Secretary,
E. Y. MALLARY, President."

There was introduced by the complainant the Minutes of the Directors' meeting of the Commercial National Bank of December 18th, 1914, as follows:

"Meeting of the Board of Directors of the Commercial National Bank held in its old banking room December 18th, 1914. Present: E. Y. Mallary, F. C. Ries, L. O. Benton, L. S. Dure, R. L. Smith, A. W. Lane, W. T. Anderson, Oscar Bradley, C. M. Adams, J. J. Cobb, Green Johnson, attorney, and E. P. Mallary, attorney. In absence of the cashier J. J. Cobb was requested to act as secretary. Minutes of two previous meetings were read and approved. Mr. Benton called attention to his statement that he would furnish a corrected list of loans to which he wished to object, and did afterwards furnish.

Mr. Benton requested correction in minutes of November 10th to include statement by Mr. Lane that Directors incur no personal liability for the fee in voting attorneys fees to Messrs. Jordan & Lane and Messrs. Hardeman, Jones, Park & Johnston—Mr. Lane assented and it was so ordered.

Mr. Benton moved that action of the Board
482 in requesting American National Bank to pay fees to attorneys be rescinded.

Mr. Anderson offered as a substitute to Mr. Benton's motion that previous action of Board of Directors awarding compensation of $2,500.00 to Johnson & Lane and $2,500.00 to Hardeman, Jones, Park & Johnston be rescinded and the question of compensation be reserved for future adjustment, recognizing however that Messrs. Jordan & Lane are entitled to compensation for legal services.

Mr. Benton objected to the last clause and moved that it be struck out. This was lost, Messrs. Benton, Ries and Smith only voting in favor of it.

Mr. Anderson's substitute was then voted on and carried. Mr. Benton asked to be recorded as voting against it.

Mr. Benton had read a resolution which he intended to offer at a meeting at which no quorum was present, said resolution calling for appointment by the Directors of a committee of three to raise funds to pay for audit and other expenses and to take up with Government the investigation and the prosecution of officers if any flaws could be found in their actions to warrant same. This was lost. Messrs. Benton, Smith and Ries for it. During the discussion of this resolution attention was called to the fact that Mr. Benton had been drawing a compensation of $500.00 per annum to look after having bank properly audited and had himself frequently gone through the notes of the bank, handling the ones to which he now objects.

Meeting adjourned.

J. J. COBB, Acting Secretary."

483 There was introduced by the complainant an excerpt from the Minutes of the Board of Directors of the American National Bank, held August 1, 1914, as follows:

"Resolved, That this association assume the payment of the deposits, bills payable, and other liabilities of the Commercial National Bank of Macon, shown by the list of liabilities furnished by said bank to this bank, and agree to pay the same when and as the same are presented for payment, upon condition that said Associa-

tion transfer to this Association as cash or as collateral for its notes, cash, cash items, bills receivable, bonds, real estate, and other assets sufficient in amount and in value in the estimation of the officers of this Association to fully protect and secure this Association for any and all amounts so assumed, or shall otherwise satisfactorily secure this Association for all amounts paid or assumed; this Association to take over the business of said Association in the manner aforesaid, accounting to the shareholders of said Association for any overplus which may remain after paying the indebtedness of said Association in full, and the expenses of realizing on the assets transferred to this Association as aforesaid; this Association to charge nothing for its services in so doing. The officers of this Association are hereby given full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers, and said officers are further authorized to make such contract with the directors of said association or with such liquidating agent as may be appointed for said association, provided, however, that this resolution shall not become effective until the other banks of the Macon Clearing House Association shall, by proper resolutions, agree to supply, in proportion to their respective capital and surplus, their proportionate share of cash and exchange that may be necessary to meet withdrawals by depositors not immediately re-deposited in this Association, and other cash demands to which this Association may be required to respond. Provided further, that in the event the officers of this association shall, upon a further investigation of the affairs of the Commercial National Bank, deem it unsafe to proceed under this resolution, they shall not do so."

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There was introduced by the complainant a resolution of the Board of Directors of the American National Bank, adopted August 7, 1914, as follows:

"On motion it was resolved that President R. J. Taylor be authorized to appoint a committee of three as an advisory committee to assist him in looking after the affairs of the Commercial National Bank of Macon, which bank was absorbed by the American National Bank of Macon. The president appointed on this committee Messrs. Park, Lee and Hillyer."

There was introduced by the complainant extracts from the minutes of the Board of Directors of the American National Bank of August 13, 1914, as follows:

"Resolved, that the contract, dated August 11th, 1914, between this association and the Commercial National Bank of Macon, said contract having been signed, in behalf of this Association, by its president and cashier, and, in behalf of the Commercial National Bank, by E. Y. Mallary, President, and E. N. Lewis, Cashier; said contract having been made pursuant to the reso-
485 lution of the Board of Directors passed on August 1st, 1914, be ratified and approved.

Resolved, further, that this Association act as liquidating agent for the Commercial National Bank as provided in said contract upon the terms therein stated.'

On motion the following preamble and resolution were offered and unanimously carried:

'Whereas, the Commercial National Bank of Macon, Georgia, is winding up its business for the purpose of

consolidating with this Association, and whereas this Association desires to take advantage of the provisions of Section 5223 U. S. R. S. which provides that 'An Association which is in good faith winding up its business for the purpose of consolidation with another Association, shall not be required to deposit lawful money for its outstanding circulation; but its assets and liabilities shall be reported by the Association with which it is in process of liquidation,' therefore, be it resolved, that in consideration of the transfer of this Association by the Commercial National Bank of Macon, of the $200,000.00 in United States bonds now on deposit with the Treasurer of the United States as security for circulation of the Commercial National Bank of Macon, this Association does hereby assume all the liabilities of said The Commercial National Bank of Macon, on account of its circulation.'

On motion the following resolution was offered and unanimously carried:

'Resolved, That the officers of the American National Bank of Macon, be authorized to pay the Commercial National Bank of Macon, for the $200,000.00 of Government bonds lodged with the Treasurer of the United States for circulation, and $50,000.00 of Government bonds lodged with the Treasurer of the United
486 States to secure United States deposits, the market price for said bonds as evidenced by the market report published in the Commercial and Financial Chronicle in the City of New York under date of August 1st, 1914."

There was introduced by the complainant the Minutes of the Board of Directors of the American National Bank of August 31, 1914, as follows:

"On motion it was resolved that the contract between the American National Bank of Macon and the Commercial National Bank of Macon, dated August 11th, 1914, and passed at a meeting of this Board on August 13th, 1914, be spread on the minutes.

On motion, it was ordered that the following prices, paid for Government bonds, purchased from the Commercial National Bank of Macon, the same being the bid quotations as printed in the Financial Chronicle of New York under date of August 1st, 1914, be inserted in the minutes:

| | | |
|---|---|---|
| $200,000.00 | 2% U. S. Bonds at 96-3/4 | $193,500.00 |
| 50,000.00 | 3% U. S. Bonds at 101 | 50,500.00." |

There was introduced by the complainant the Minutes of the Board of Directors of October 10th, 1916, as follows:

"The report of Messrs. O. A. Park and L. P. Hillyer of their conference with the Comptroller of the Currency and other officials concerning the condition of the affairs of the Commercial National Bank was amended to read:

"Messrs. L. P. Hillyer and O. A. Park also reported that they had recently conferred with the Comptroller of the Currency and other officials of his department in Washington with regard to the liquidation of the Commercial National Bank—at which time they had discussed at some length and in detail the present status of affairs and the efforts which had been, and were being, made by this bank to wind up the affairs of the Commercial and pay off the amounts advanced by the American National Bank

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in paying depositors and other creditors of the Commercial. They reported that the situation seemed to be well understood by the Comptroller and that the officers of the Department expressed themselves as satisfied with the management of affairs; and as being desirous of aiding and cooperating with the American National in its efforts to complete the liquidation, and to re-imburse itself for its large outlays in behalf of the Commercial."

There was introduced by the Complainant the following extracts from the Minutes of the Directors' meeting of the American National Bank of date of December 14th, 1915:

"The following preamble and resolution was introduced by J. B. Riley, duly seconded and unanimously carried:

"Whereas, this bank, pursuant to a resolution of the Board of Directors, took over the Commercial National Bank of Macon on the 1st day of August, 1914. and paid off the depositors and other liabilities of said bank, taking as collateral security for the amounts advanced by it all of the assets of the said Commercial National Bank, and

Whereas, after applying to the amounts advanced all collections which have been made from the assets so held as collateral, and after a careful estimate of the value of the remaining collateral and other security held by the bank, it appears that said security will not be sufficient to pay the amount advanced by this bank, not including in the estimate, however, the liability of

488 the stockholders of the said Commercial National Bank, the amount and extent of which is problematical; and

Whereas, it is desired that the statement of the bank should not include any assets except those of known solvency and value, and that the statements should represent, in every way, the true condition of the bank;

It is therefore resolved, that the officers of the bank charge to profits and loss the sum of $45,000.00, which represents the estimated loss sustained by the bank on account of the Commercial National Bank, and that proper explanatory entries be made upon the books of the bank to carry into effect this resolution."

There was introduced by the complainant the following from the minutes of the Board of Directors of the American National Bank, dated June 27, 1916:

"On motion the president was authorized to make an offer of forty thousand ($40,000.00) dollars for the Commercial National Bank Building, together with all fixtures now in the building, as well as the furniture, safes and the vaults contained therein.

On motion the action of President Taylor in purchasing the W. E. Small property on College Street for ten thousand ($10,000.00) dollars was approved.

On motion, the President and the finance committee (or the finance committee, in the absence of the president) were authorized to close up the affairs of the Commercial National Bank by suit, sale or otherwise."

There was introduced by the complainant the Minutes of the Directors' meeting of the American National Bank of August 7, 1916, as follows:

489 "The minutes of the last meeting held June 27th, 1916, were read and confirmed with the exception that the minutes should have shown that while the Commercial National Bank paid $12,500.00 for the W. E. Small property, the American National Bank took it over for the sum of $10,000.00.

President Taylor reported that in accordance with the resolutions passed at the regular meeting held June 27th, 1916, he had taken over the Commercial National Bank building, together with all fixtures now in the building, as well the furniture, safes and vaults contained therein, at $40,000.00."

There was introduced by the complainant the following from the minutes of the Directors' meeting of November 2, 1916, of the American National Bank:

"On motion of Dr. W. G. Lee, it was resolved that it is the sense of the Board of Directors that immediate steps should be taken to enforce the statutory liability of the shareholders of the Commercial National Bank for the purpose of satisfying the indebtedness due by said bank to this association, the liquidation of the Commercial National Bank having been practically completed, and it being manifest that the remaining assets will not be sufficient to pay the indebtedness due by the said Commercial National Bank to this Association; and that the matter of instituting appropriate proceedings to enforce such liability be referred to the president, with direction to confer with the counsel for the bank with a view to arranging for instituting appropriate proceedings at the earliest practicable time, the president to be given full authority in the premises."

490 There was introduced by the Complainant the Minutes of the Board of Directors of the American National Bank of April 28, 1917, as follows:

"The following resolution was offered, duly seconded, and unanimously carried:

"Whereas by resolution of the Board of Directors of this bank passed at the meeting held on December 14th, 1915, the officers were directed to charge to profit and loss the sum of $45,000.00, said sum being estimated as representing the loss which will be sustained by this bank on account of the payment by it of the liabilities of the Commercial National Bank, not including in the estimate the liability of the stockholders of the said bank, the amount of which was uncertain, the purpose of said resolution being not to carry and include in the list of assets of the bank an account which was not believed to be solvent and collectible, and it being recognized that the amount due by the Commercial National Bank was more than could be realized out of its assets; and

Whereas, since said time suit has been entered and is now pending against the stockholders of the said Commercial National Bank, and it is therefore desirable that the books of this bank should show the true amount of the indebtedness of said bank to this bank and that the books of this bank should correspond with the books of the Commercial National Bank;

Therefore, resolved: that the officers be, and they are hereby, directed to re-enter on the account of the said Commercial National Bank, the said sum of $45,000.00 charged to profit and loss as hereinbefore stated,

and also to enter upon said account the interest due thereon according to the terms of the contract between this bank and the Commercial National Bank, said interest up to March 31st 1917, amounting to
491 $77,424.85. Said officers are also authorized and directed to make a corresponding cross entry setting aside said two amounts of $45,000.00 and $77,425.85 as 'reserve for losses on account Commercial National Bank,' these entries being made in accordance with the request of Joel Hurt, liquidating agent."

There was introduced by the complainant the Minutes of the meeting of the stockholders' committee of the Commercial National Bank, dated August 12th, 1914, as follows:

"Macon, Georgia, August 12th, 1914.

"The first meeting of the stockholders' Committee of the Commercial National Bank was held this day at the office of Mr. Anderson, all members being present.

Mr. McKay nominated Mr. Dure for Chairman, which motion was seconded by Mr. Benton. Carried.

Mr. McKay moved that the $300,00.00 in bonds belonging to the Bank be sold. Carried.

Mr. Lewis moved that no expense be incurred in the matter of liquidation of the bank without the approval of this Committee, and that a copy of this resolution be furnished respectively the American National Bank and the Commercial National Bank. Carried.

Mr. Lewis moved that no salaries be paid officers of the Bank from August 1st, 1914. Carried.

Mr. Benton moved that the chairman request financial statement from the Mallary Mill Supply Company, Mallary Brothers and Company, Mallary and Taylor

Iron Works, Mallary Machinery Company, Taylor Boiler Works, and also from F. L. Mallary, W. H. Roper, C. F. Smith, and the business of J. H. Virgin. Carried.

Mr. Lewis moved that the next meeting of
492 this Committee be called as soon as the National Bank Examiner prepares his report. Carried.

Mr. Anderson moved that the majority of this committee be authorized to act on all matters of the Bank. Carried.

It was agreed that the Chairman take in charge the matter of renting the banking office and the offices in the bank building."

These minutes are approved, December 2, 1914.

There was introduced by the complainant the Minutes of a joint meeting of the Stockholders' Commitee of the Commercial National Bank, and the Committee of Directors of the American National Bank of August 26th, 1914, as follows:

"Macon, Georgia, August 26th, 1914.

Joint meeting at Continental Trust Company's Offices of Stockholders' Committee, Commercial National Bank, and Directors' Committee of the American National Bank as liquidating agent.

Present: L. S. Dure, W. T. Anderson, Jno. F. Lewis, J. J. McKay, of the first mentioned, and L. P. Hillyer, W. G. Lee, O. A. Park, R. J. Taylor, of the last mentioned.

On motion duly seconded, and unanimously carried, L. P. Hillyer was elected chairman and J. J. McKay secretary of these joint bodies.

Mr. R. J. Taylor stated that he had requested Mr. Hillyer to take particular charge of the Commercial National's affairs and the collection of outstanding notes held by them.

It was understood that Chairman Hillyer will call together a joint meeting of these committees to confer and determine on the course to be pursued in connection with any claims that he may not be able to satisfactorily handle.

493 On motion of Mr. McKay, the Chairman, Mr. Hillyer was authorized to place in the hands of attorneys for collection the past due notes of Herbert F. Haley.

On motion of W. T. Anderson as to the matter of fees to be paid attorneys, it was decided with approval of Mr. O. A. Park that no attorneys' fees were to be paid on collections where claims are paid before or within the ten days before filing suits and that, when no collection is made no fee is to be charged; further that, in cases of litigation and no collections resulting, fees are to be determined with this committee in each case.

On motion of Mr. Dure, the joint committees approved sale by the liquidating agent, as of August 1st, 1914, of United States Government bonds, as follows:

$20,000.00 2½% at 96¼, realizing $193,500.00.
50,000.00 3½ at 101, realizing 50,500.00.

On motion of Mr. McKay, it was unanimously agreed that all matters discussed or actions determined by these committees are to be considered and treated as strictly confidential.

On motion of Mr. Anderson, O. A. Park, and Malcolm D. Jones were requested to confer about the bonds of the Security Investment Co., and the Beechwood Farms,

and submit to these committees a report outlining their suggestions as to the proper procedure for equitable settlement of the claims made by the Central Trust Co. of ownership or control of certain of these bonds as collateral security on an indebtedness to them by T. C. Parker. Those voting 'aye' were Dure, Anderson, McKay, Park, Lee, Hillyer, Taylor; voting 'no' with request that the vote be recorded, John F. Lewis.

On motion of Dr. Lee, with reference to the
494 affairs of T. C. Parker, it was decided to undertake securing from him a complete and legal mortgage bond of the Beechwood Farms, in view of statement by O. A. Park that there was considerable question as to legality of existing mortgages. Motion also included the appointment of a special sub-committee, consisting of Hillyer, Dure and Park, to negotiate with T. C. Parker and if possible have him turn over all his holdings for liquidation and settlement of indebtedness to Commercial National Bank. In case of Parker's refusal this special sub-committee was instructed to have attorneys place Parker in bankruptcy.

On motion of Dr. Lee, the indebtedness of Mallary Bros., Mallary Mill Supply Company, Mallary-Taylor Iron Works, F. L. Mallary, and employees of these concerns, is to be specially looked after and handled by the sub-committee of Hillyer, Dure and Park.

Without further motion, it was understood that this sub-committee and the liquidating agent would secure all they possibly could of the Eagle River Mining Company's stock and bonds held by parties indebted to the Commercial National Bank."

There was introduced by complainant the following Minutes of a joint meeting of August 28th, 1914:

"Macon, Ga., August 28th, 1914.

"Joint meeting of the Central Trust Company, three o'clock P. M. today of stockholders' committee Commercial National Bank, with Messrs. Dure, Benton, Anderson and McKay present; committee from Central Trust Company with R. L. Wilson, Malcolm D. Jones; committee of Commercial National Bank Directors with A. W. Lane and C. M. Adams, and attorney O. A. Park of the American National Bank, liquidating agent of the Commercial National Bank; present.

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Chairman Dure stated object of meeting consideration of claim by Central Trust Co. to ownership of $50,000 bonds of Beechwood Farms, and $50,000 bonds Security Investment Co., which are held by the Commercial National Bank.

Attorney Malcolm D. Jones of Central Trust Co. presented oral and written statements which he believes support the claim of his clients, and requested Mr. Dure to make a statement of his knowledge of the transaction. Statement was made by R. L. Wilson.

E. N. Lewis, as Cashier of Commercial National Bank, and custodian of its assets, stated that he had no understanding of the Central Trust Company's interest in the Beechwood Farms bonds.

L. S. Dure stated that J. J. Cobb in presence of Dure and W. T. Anderson urged R. J. Taylor to accept notes of Beechwood farms and Security Investment Co. as collateral against certificate deposits of $35,000 stating to Taylor that these notes were secured by the bonds of the two companies in custody of the Commercial National.

L. O. Benton asked to be recorded on the minutes as opposed to giving up any securities found in Commer-

cial National Bank, no matter what claims are presented or what showing with reference to them be made.

Signed statement of T. C. Parker was given as follows:

"Bonds of Beechwood Farms and Security Investment Co. were deposited with Central Trust Co. as security for indebtedness of Central Trust Co., Commercial National Bank and Commercial Savings Bank. Don't remember amounts due each one, but all three
496 were secured by the bonds of the two companies."

(Signed) T. C. PARKER.

In presence of Commercial National Committee, C. M. Adams, L. O. Benton, A. W. Lane, L. S. Dure, W. T. Anderson, August 28th, 1914, at Macon, Ga.

On motion, the meeting adjourned at five P. M. to meet the following day, August 29th, 1914, at eleven o'clock, at Central Trust Company's office for further consideration of the matter."

There was introduced by the complainant the Minutes of the joint committee of August 29, 1914, as follows:

"Macon, Ga., Aug. 29, 1914.

"Adjourned meeting from August 28th, 1914, of joint commitees Commercial National Bank stockholders, Central Trust Company Directors, Commercial National Directors.

Present, Messrs. Dure, McKay, Adams, Lane, Malcolm D. Jones, R. L. Wilson W. T. Anderson.

On motion, J. J. Cobb who was present, was asked to make a statement regarding the Beechwood Farms bonds and Security Investment Company bonds. Mr. Cobb stated that these bonds were undoubtedly held for the interest of all parties; that all of the issues were held at Commercial National Bank simply as a matter of convenience.

On motion of A. W. Lane, the Chairman appointed a special committee of three to further investigate this matter and report later to joint committees. Sub-committee appointed was Messrs. Lane, Adams and McKay.

There being no further business, the meeting, on motion, adjourned."

497 There was introduced by the complainant Minutes of joint meeting of August 29, 1914, as follows:

"Macon, Ga., August 29th, 1914.

Meeting of stockholders' committee Commercial National Bank at Central Trust Company's office today. Present: Messrs. Dure, Anderson and McKay.

The Chairman stated that committee member, L. O. Benton, had reiterated verbally his written request to members of the committee for audit of the Commercial National Bank affairs by the Bankers Audit Company. The committee, thinking that the most essential thing to conserve the stockholders interests at this time required all energies being directed to liquidating the assets, on motion of Mr. Anderson, it was decided to defer for the present, any further audits, Mr. Lewis having advised the members of the committee that he did not favor an audit at this time.

There being no further business, the meeting, on motion, adjourned."

Complainant next introduced the Minutes of joint committee of September 15, 1914, as follows:

"Macon, Ga., Sept. 15, 1914.

Meeting of joint committees, American National Bank Directors, with Messrs. Hillyer, Park and Taylor present, and stockholders' committee Commercial National Bank with Messrs. Dure, Anderson and McKay present.

Typewritten statement made by F. L. Mallary was read in which he outlined the history and condition of affairs of his various concerns and their employees who are indebted to the Commercial National Bank.

On motion of Mr. Taylor, it was decided to
498 defer action on this statement until the return of E. Y. Mallary from Alaska.

Mr. Taylor presented for consideration the indebtedness of J. D. Burke Co., and Mr. W. T. Anderson suggested the advisability of himself seeing Mr. Burke and looking into his affairs with the view of making some report later to the committee on which could be based some arrangement for settlements.

Mr. Taylor further called attention to indebtedness of the Jessup Trust Co., and J. L. Jessup, whereupon, Chairman Hillyer was requested to call on those parties for detailed information as to their assets and collaterals and undertake to make an arrangement whereby their indebtedness to the bank could be reduced gradually, and possibly, by monthly payments.

Mr. Taylor then called attention to the indebtedness of W. P. Wheeler, and Chairman Hillyer was requested to demand the collateral security on this loan as listed

in memorandum held by Mr. Dure from data given him by Messrs. Cobb. Mallary and Lewis.

On motion, the meeting adjourned, subject to call of the Chairman."

There was introduced by the complainant the Minutes of the stockholders' committee meeting of September 30, 1914, as follows:

"Macon, Ga., Sept. 30, 1914.

Meeting of stockholders' committee held in Chairman Dure's office 10:30 A. M. today. Present: Messrs. Dure, Anderson, Lewis and McKay.

Report of sub-committee, consisting of McKay
499 Lane and Adams, on the matter of Beechwood Farms and Security Loan and Investment Co. as to claim of Central Trust Co. of ownership in part of the bonds issued by the concerns, was submitted and placed on file to be handled later."

The meeting of stockholders' committee of Commercial National Bank held on September 10, 1914, were introduced by complainant, as follows:

Meeting of Stockholders' Committee Commercial National Bank held at 3:30 P. M. today after the stockholders' meeting; present, Messrs. Dure, Anderson, Lewis and McKay.

On motion of Mr. Lewis, Mr. Dure was elected Chairman and Mr. McKay secretary of the committee, and all previous acts of the committee were approved.

On motion of Mr. Lewis the Chairman was requested to call on the proper officers for a statement and list of stockholders and bond holders of the Eagle River Mining Co.

On motion of Mr. Lewis the Chairman was requested to ask the American National Bank for a statement of expenses to date in connection with the liquidation of the Commercial National's affairs.

There being no further business, the meeting on motion adjourned."

There was introduced by the complainant the Minutes of October 12th, 1914, as follows:

"Macon, Ga., October 12, 1914.

'Meeting of joint committees American National Bank with Hillyer, Park and Lee present and Commercial National stockholders with Dure, Anderson and McKay present, and Commercial National Directors, by invitation, Messrs. Adams and Lane.

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Chairman Hillyer reported that the Williams Wagon Works Company had asked that they be allowed to make payment of $500 on their indebtedness, and this was agreed to, with extension of balance for sixty days.

On motion of Mr. McKay, action of the liquidating agent in accepting $500 in full settlement with Dave Snetman, was approved.

Chairman Hillyer read a communication from John F. Cone, asking that no action be taken at this time in connection with the indebtedness of the Capitol Savings Bank. Mr. Cone was called in and made a statement, and on motion of Mr. Dure, the chairman appointed a committee composed of Messrs. Hillyer, Dure and Anderson, to go through the assets of the Capitol Savings Bank, so that this joint committee could properly determine what action if any should be taken.

Mr. Park read a typewritten agreement to be made between the Central Trust Company, the Commercial National Bank and the American National Bank, as liquidating agent, whereby an equitable settlement could be effected touching the claim of the Central Trust Company of interest in bonds or securities of the Beechwood Farms Company, and Security Loan & Investment Company, and other concerns allied with those, or with T. C. Parker, and after full explanation made by Mr. Park and a further explanation by George S. Jones, trustee for the T. C. Parker concerns, on motion of Mr. Anderson, approval was given to the plan submitted by the American National Bank committee and they were authorized to execute the proposed agreement in settlement of controversy existing between the several institutions mentioned. Messrs. A. W. Lane and C. M. Adams, Directors of the Commercial National, gave their personal approval to the said agreement, copy of this agreement to be filed with the secretary as part of the permanent records.

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Mr. Dure presented and read a statement from the Southland Knitting Mills, contending that they do not owe the Commercial National the notes outstanding as shown by books of said bank.

On motion of Mr. McKay, Messrs. J. J. Cobb and E. N. Lewis are to be asked for written statements with reference to this claim before any action is taken by this committee.

It was decided to postpone matters of W. E. Small, pending his release from hospital where he is now confined by illness.

On motion it was determined to hold regular meetings of these joint committees every Wednesday afternoon at five o'clock at office of Continental Trust Company."

There was introduced by the complainant the Minutes of a joint committee meeting held October 17, 1914; as follows:

"Macon, Ga., Oct. 17, 1914.

"Meeting of joint committees was held at 4:30 P. M. in American National Bank;

Present: Messrs. Hillyer, Park, Anderson and Dure.

Letter from E. P. Mallary was read, in which proposition was submitted by F. L. Mallary in regard to surrender of certain stocks of his in the Mallary & Taylor Iron Works and the Mallary Mill Supply Company.

After discussion, it was determined on motion, that Mr. Park should see E. P. Mallary and insist upon a transfer of all these stocks held by the various banks, and that the committee be permitted to make all necessary examinations of the statement of business of both companies, after which they would take up the
502 question of accepting this stock at an agreed price.

There being no further business, the meeting adjourned."

There was introduced by the Complainant the Minutes of the meeting of October 21, 1914, as follows:

"Macon, Ga., Oct. 21, 1914.

"Regular weekly meeting of the joint committees was held this day at the office of the Continental Trust Company, there being present Messrs. Hillyer, Park, Lee, Anderson and Dure.

The indebtedness of the Capitol Savings Bank was discussed, Messrs. Anderson, Dure and Hillyer having reported that they had made an examination of the institution, the Commercial National Bank having as collateral certain stock in the Central Trust Company, which is held to first secure the Central Trust Company on certain papers; Dr. Lee moved that Mr. Hansell Hillyer be requested to take up with the Central Trust Company the matter of endeavoring to make some settlement with them and report at the next meeting.

The indebtedness of the Southland Knitting Mills, which is in dispute, was fully gone into, and action in this matter was deferred until statements could be secured from Mr. J. J. Cobb and Mr. E. N. Lewis.

The indebtedness of Mr. F. L. Mallary and his companies was discussed, and Mr. Park was requested to insist that the stock of, respectively, the Mallary & Taylor Iron Works and the Mallary Mill Supply Company, held by the bank, be transferred and new certificates issued in the name of the bank and that an audit of the affairs of these two companies be made, and further action be taken as soon as this is done.

The indebtedness of J. L. Jessup and the Jes-
503 sup Trust Company was fully discussed, and Mr. Hansell Hillyer and Mr. Dure were appointed as a committee to make an examination of the Jesup Trust Company and to also have Mr. Jesup to instruct the Empire Life Insurance Company to pay over to the bank all moneys to be due him on his contract with them, which contract is held as collateral on the indebtedness of J. L. Jesup.

Mr. Joel A. Smith requested that his note of $1,300 be held for a short while, offering to give a mortgage on property in Dublin, Ga., to secure same which was agreed to by the committee.

Mr. W. E. Small's indebtedness was discussed, and it was decided to request Mr. Small to attend our next meeting.

The indebtedness, respectively, of the Anderson Printing Company, E. W. Burke and the J. W. Burke Company, was taken up, after which the matter was referred to Mr. W. T. Anderson to see the parties, and report at our next meeting.

A letter from Mr. Eugene Anderson regarding his indebtedness was read, in which he agreed to make certain monthly payments, which the committee agreed to, so long as the payment were regularly met as provided in his letter.

Mr. James Platt requested to be allowed to pay $10.00 per month on his indebtedness of $224.40, which was agreed to by the committee.

Mr. W. D. Drew requested that his paper of $1,052.50 be held for thirty days, he agreeing to give additional security, to which the committee agreed.

The meeting then adjourned."

There was introduced by the complainant the Minutes of October 28, 1914, as follows:

504 "Macon, Ga., Oct. 28th, 1914.

"The regular weekly meeting of the joint committee was held this day at the office of the Continental Trust Company, there being present Messrs. Hillyer, Park, Anderson and Dure; Mr. Hansell Hillyer also meeting with the committee.

The following matters were given attention:

Note of R. L. Berner, $300. to hold until Nov. 22nd, at which time his other note matures.

Place in hands of attorney note of Ardelle Armstrong.

To accept monthly drafts drawn on J. Waxelbaum for payment of indebtedness of D. Waxelbaum.

Indebtedness of Mr. A. McKay; it was agreed to request statement of his business, and agreed to hold his papers, provided an extension of time was granted by his other creditors, and we are paid proportionately along with other creditors from time to time.

Indebtedness of Mrs. A. P. Rice secured by mortgage on farm property: To accept the property at a fair valuation or insist upon some monthly payments equivalent to rent to be paid on the debt.

The matter of the indebtednes of the Capitol Savings Bank, which is secured only by a secondary lien of 222 shares of Central Trust Company same being held by the Central Trust Company to secure certain discounts made for the Capitol Savings Bank maturing from one to five years was fully discussed and it was deemed advisable to affect some settlement with the Central Trust Co. whereby the Commercial National Bank would have some direct collateral immediately and a proposition along this line was submitted by the Cen-
505 tral Trust Company, which was viewed with favor by the committees, and the matter referred to Mr. Hansell Hillyer to take up with Mr. Wilson of the Central Trust Co., and the Capitol Savings Bank, with a view of consummating same.

Mr. Anderson made a motion that a committee be appointed to confer with Mr. E. Y. Mallary and request that he deliver to us any securities held by him for the account of any one's indebtedness due the bank also that said committee be permitted to examine the books and affairs of the Eagle River Mining Company, which motion was duly carried, and the Chairman appointed Mr. Anderson and Mr. Dure as the committee.

Mr. Hansell Hillyer was requested to investigate the value of certain Monarch Mining Company stock, held as collateral on indebtedness of George Collier.

The meeting adjourned."

There was introduced by the complainant the Minutes of November 4, 1914, as follows:

"Macon, Ga., November 4, 1914.

"Regular weekly meeting of joint committees Commercial National Bank, with Messrs. Dure, Anderson and McKay present; and American National Bank Directors, with Messrs. L. P. Hillyer, Dr. W. G. Lee and Hansell Hillyer present.

Mr. Dure mentioned the Ragland Brick Company matters, and was asked to go fully into the details of it with Attorneys Hardeman, Jones, Park & Johnston.

Mr. Anderson reported that he had as directed seen Mr. Burke about his affairs, Mr. Burke was called over the phone and presented himself before the committee.

506 His letter of October 2nd to Mr. Hillyer was read, proposing to pay his indebtedness to the Commercial National Bank at the rate of $200 per month and $500 a month after January 1st, 1915. Mr. Burke stated that none of the Burke Company's creditors were pressing him and that he had financed all indebtedness outside of that of the Commercial National. On motion of Mr. Dure, duly seconded, the committee determined to accept Mr. Burk's proposition with the understanding, to which he consented, that he would give no more mortgages, and advise the committee of any anticipated changes in his affairs.

Hansell Hillyer reported that the trade made with the Capitol Savings Bank was now being closed up in legal form by the attorneys.

Hansell Hillyer reported that he had a conference with Mr. Albert McKay, who showed him that his indebtedness would be taken care of. Mr. Hillyer was instructed to take up with Mr. Albert McKay several past due notes and sue, in the name of the bank, such as he and Mr. McKay agreed on.

W. T. Anderson stated that his note of $6,000 due Nov. 2nd, 1914, would be taken care of within the next thirty or forty-five days. On motion of Dr. Lee this disposition of it was agreed on.

On motion of Mr. McKay, the sub-committee was instructed to demand of the Jesup Trust Company an investigation of their affairs, or stand for a law suit.

Mr. Dure was appointed to see Mr. Thomas B. West relative to the indebtedness of the Security Loan & Abstract Company and report to the committee.

On motion of Mr. Dure with reference to note of S. B. Smith, Hansell Hillyer was instructed to
507 see the indorser, E. N. Lewis, and make effort to secure payment or security on the note.

The same direction was given to note of A. M. Stewart.

On motion it was determined to hold by-weekly meetings hereafter, on Wednesday and Friday at five o'clock P. M.

There being no further business, the meeting on motion adjourned."

The complainant next introduced the Minutes of November 11th, 1914, as follows:

"The committees held their regular meeting today at the offices of the Continental Trust Company, there being present Messrs. Hillyer, Benton, Anderson, Park and Dure.

After some discussion regarding the Fidelity bond of Mr. Lewis, cashier, on motion of Mr. Anderson, the bond was delivered to Mr. Park to give such notice to the company as he considered proper in the premises.

After a general discussion of the various affairs of the bank the meeting adjourned."

There was introduced by the complainant the Minutes of the meeting of November 13th, 1914, as follows:

"Macon, Ga., Nov. 13, 1914.

"The regular weekly meeting of the joint committees was held this day at the office of the Continental Trust Company there being present Messrs. L. P. Hillyer, Anderson and Dure.

Mr. Hansell Hillyer made a report regarding the indebtedness of Mr. S. M. Smith, and also of Mrs. S. B. Smith, stating that he was informed that the note of Mrs. Smith was secured by mortgage of real estate, the mortgage being in possession of Mr. E. N. Lewis, also reporting that the paper of Mr. S. B. Smith was unsecured, but that he had 65 bales of cotton stored in warehouse.

After consideration, it was agreed that the
508 note of S. B. Smith be held for ninety days, if secured by cotton, or cotton purchased on a basis of eight cents per pound.

Motion was made by Mr. Dure and passed that Mr. Park be instructed to request E. N. Lewis, J. J. Cobb and E. Y. Mallary to deliver to the bank all collateral of any character made to the bank.

Mr. Dure reported that he had conferred with Mr. T. B. West regarding the indebtedness of the Security Loan & Abstract Company, and that he had requested Mr. West to furnish the committee his statement regarding

each of the notes held by the bank, which Mr. West stated he would do.

After a general discussion of the bank's affairs, the meeting adjourned."

T.. e was introduced by the complainant the Minutes of t joint committee of November 27 1914, as follows

"Macon, Ga., Nov. 27th, 1914.

Meeting of Joint Committee held this day, there being present, Messrs. Hillyer, Park, Anderson and Dure.

The indebtedness of Mrs. A. P. Rice of $5,750.00 which was settled by accepting deed to 44 acres of land, subject to an encumbrance of $2,500, was approved, as Mrs. Rice possessed no other assets, and this settlement saves any expense of suit in the matter.

Approval was given to the sale for $4,500. of a certain house and lot on Forsyth Street Vineville, which was held under second mortgage by the bank against Mr. S. C. Moore, the proceeds of same, less the first mortgage encumbrance to be paid to the bank.

Mr. Dure reported that he had had several con-
509 ferences with Mr. T. B. West in connection with the indebtedness of the Security Loan & Abstract Co., and would report fully in the matter at an early date.

Mr. Park reported regarding correspondence he had had relative to the claim on bond of E. N. Lewis, stating that to further pursue the matter would necessarily involve the expense of attorney's fee, stating that his firm would be agreeable to accepting a fee of $250 and ten per cent on the amount realized on the bond, or a fixed fee of $500, also stating that he was inclined to believe that recovery on the bond was doubtful.

Mr. Dure and Mr. Anderson both thought the effort should be made to realize on the bond, and Mr. Hillyer stated that the American National Bank was unwilling to make any advance for the expenses in the matter, and therefore no definite conclusion was reached in the matter beyond the fact that Mr. Hansell Hillyer was requested to furnish to the bonding company as full information as possible, upon which a claim for collection of the bond was expected.

The meeting then adjourned."

The complainant introduced the Minutes of the joint committee of December 2nd, 1914, as follows:

"Macon, Ga., Dec. 2, 1914.

A meeting of the joint committee was held in the office of O. A. Park Esq., there being present Messrs. Hillyer, Anderson, Park, Benton and Dure, Mr. Dure acting as secretary in the absence of Mr. McKay.

The minutes of all previous meetings up to and including the minutes of Nov. 18th 1914, were read and upon motion approved.

Mr. Dure presented a financial statement of
510 the F. A. Guttenberger Co., whose indebtedness to the bank is now $1,980.00, they having made payments to the amount of $1,200.00 on same, and this balance being secured by about $4,000. in collateral notes. This company requested an extension of not more than twelve months, agreeing to reduce same $200 each month, and this was agreed to by the committee.

Approval was given to the sale of lot of Forsyth Street, known as 604 Forsyth St., and fronting on Forsyth St. fifty feet, and running back on Boundary St. one

hundred and thirty eight feet, and on the western edge next to residence lot of S. C. Moore, one hundred and forty-three feet, at a price of $4,500.00, and being one of the two houses held by the bank by second mortgage given by Mr. S. C. Moore, the proceeds of said sale to be paid to the bank, less the amount to be paid to the Life Insurance Company of Virginia, holders of the first mortgage, and the officers of the Commercial National Bank were requested and authorized to execute the proper quit claim deed to said property.

It was agreed to offer the Rice farm of forty-four acres on Forsyth road at a price of $4,250.00.

The matter of the bond of E. N. Lewis was fully discussed, and upon motion of Mr. Anderson, Mr. Park was directed to take such action as he thought proper at a retainer's fee of $250.00 and 10% of any amount collected, and that the American National Bank be requested to pay such fee; all of the committee voting 'yes' on this motion, with exception of Mr. Benton, who voted 'no.'

The Security Loan & Abstract Co. made the following proposition:

511 In order to make a settlement of their indebtedness to the Commercial National Bank and the Commercial Savings Bank, they will, upon the consent of the joint committees from the Commercial National Bank and the American National Bank of Macon, make the same as follows:

The Security Loan & Abstract Co. will execute
One Note for $3,025.00
One Note for $2,025
One Note for $2,067.88

Making a total of $10,117.88

One of these notes of $3,025 to be indorsed by T. B. West.

The Security Loan & Abstract Co. will execute one note for $1,151.62.

One note for $730.50, making a total of $1,882.12.

All the above notes (payable the first three described to the American National Bank of Macon, and the last two described papers to Continental Trust Co.) to draw interest from date at the rate of 7% per annum. The total amount of the notes given to the American National Bank of Macon and to Continental Trust Co. by the Security Loan & Abstract Co., amounting to $12,000.00.

Mr. J. J. Cobb is to give a note in favor of the American National Bank of Macon for $6,000.00, the same to be secured by 100 shares of Central Trust Company stock.

Mr. J. J. Cobb is to give a note in favor of Commercial National Bank for $8,402.62, the same to be secured by 15 shares of Eagle River Mining Company stock, 100 shares of the Security Loan & Abstract Company stock, and coupons of the Eagle River Mining Company, amounting to $525.00.

Mr. J. J. Cobb is to give a note in favor of
512 the Commercial & Savings Bank for $1,552.77,
secured by 22 shares of Georgia Kaolin Company stock.

Upon motion of Mr. Anderson, seconded by Mr. Benton, the above settlement was agreed upon by the committees, after a careful consideration of every question pertaining to the indebtedness of the said Security Loan & Abstract Company.

After a general discussion of various matters of the bank, the meeting adjourned."

There was introduced by the complainant the Minutes of the joint committee of December 16, 1914, as follows:

"Macon, Ga., Dec. 16, 1914.

Meeting of Joint committee was held this (day?) at the office of A. O. Park, Esq. there being present Messrs. Hillyer, Anderson, Park & Dure.

Mr. E. L. Martin had before the committee the matter of the indebtedness of himself and that of Mrs. Martin and after a full discussion of the matter the following motion was offered by Mr. Anderson and carried:

'That the Commercial National Bank Committee has no authority to submit any proposition in the matter, the notes of both Mr. and Mrs. Martin having been passed to the American National Bank and suit having already been filed on same.'

Mr. Dure made a motion that the J. W. Burke Co. be notified that their papers cannot be longer carried unless satisfactorily arranged, they having failed to meet the monthly payments as previously agreed upon, also that Mr. E. W. Burke be requested to furnish the bank with a life insurance policy of $5,000 as agreed. This motion prevailed.

513 It was agreed that the notes of Mr. Ardelle Armstrong be placed with an attorney unless paid by December 20th.

Mr. Hansell Hillyer was requested to secure the endorsement without recourse of the Security Loan & Abstract Company on the notes of Mrs. B. G. Artope, the papers having been made in their name as an accommodation.

Mr. Hansell Hillyer was also requested to secure from Mr. F. T. Vincent security deed on certain property to

cover his indebtedness, and it was agreed that an extension of four months be granted Mr. Vincent.

Mr. Albert McKay was granted an extension of his indebtedness on condition that he make monthly reductions on same, and no preference created in favor of his creditors.

It was decided to defer action on note of Mr. J. J. McKay until the next meeting.

After a general discussion of the various matters of the bank, the meeting adjourned."

There was introduced by the complainant the Minutes of the joint committee on December 18, 1914, as follows:

"Macon, Ga., Dec. 18, 1914.

Meeting of the joint committee was held this day in the office of the Continental Trust Company, there being present Messrs. Hillyer, Benton, Park and Dure. Mr. Dure reported that Mr. Benton and Mr. Anderson with himself had fully considered the proposition of W. E. Small in which Mr. Small offered to convey to the bank his residence on College Street, to be accepted at a valuation of $12,500.00 and pay in cash the balance of his indebtedness to the bank. Mr. Dure stated that the property had been inspected by Messrs. Anderson, Benton and himself, and after conferring with Mr. Taylor of the American National Bank, and a full consideration of the matter being given, he
514 decided to accept the proposition, the property to be conveyed subject to approval of titles.

The following notes were given instructions to be placed with Hardeman, Jones, Park & Johnston:

Note of J. R. Whipple,
Note of B. L. Thames,
Note of Mrs. Walter H. Wiggs,
Note of C. M. Wiley,
Note of R. L. Permenter, indorsed by J. M. Dunwoody.
The other note of Permenter to be held pending a settlement.

It was agreed to hold for the present the note of the Y. M. C. A. and direction was given to hold the note of J. L. White, provided he gave security and reduce same monthly.

After a general discussion of the various affairs of the bank, meeting adjourned."

There was introduced by the complainant the Minutes of the joint committee held January 8, 1915, as follows:

"Macon, Ga., Jan. 8, 1915.

Meeting of joint committee held at officers of Continental Trust Company, January 8th, 1915.

Messrs. Hillyer, Lee and Dure present.

After a discussion of the F. T. Vincent indebtedness direction was given that the paper be placed with the attorneys for collection.

The paper of P. D. Todd was also directed to be placed with the attorney, and also the paper of A. M. Stewart if not satisfactorily arranged for by January 11th.

It was agreed to hold the paper of L. A. Morris, upon his agreement to reduce same by monthly payments of $50.00.

The disputed notes of the Southland Knitting Mills were discussed, and action deferred until the
515 next meeting.

The meeting then adjourned."

There was introduced by complainant the following Minutes of the joint committee held on April 6th, 1915:

"Macon, Ga., April 6, 1915.

Meeting of joint committee held this day at the office of the Continental Trust Co. Present, Messrs. Hillyer, Park, Benton, Dure and R. J. Taylor.

Mr. Taylor stated that he had received an offer of $5000. from Mr. H. F. Haley to settle in full his indebtedness of approximately $16000. which he had declined, and which was approved by the committee. Mr. Park then reported an agreement had been made with Mr. Haley, whereby he had consented to a postponement of the case until the June term of Court, at which time Mr. Haley had agreed to confess judgment.

A full list of all notes in the hands of attorneys for collection and those in the hands of the bank was submitted and carefully gone over; the desirability of selling the American National Bank all of the unpaid notes at an agreed valuation was discussed at some length, and it was decided that the committee from the Commercial National Bank would consider the matter of placing a value on the separate items with a view of recommending to the stockholders that this plan be adopted.

Mr. Hillyer presented a letter from Mr. J. R. L. Smith, attorney for Rice and Hutchinson, regarding the claim against the bank of about $180. arising from the bank having guaranteed a certain amount due them by Renfroe Bros., Mr. Smith offering to accept
516 in settlement of the claim the sum of $125., which after discussion was referred to attorney Park, with power to act.

Motion was made and adopted that in view of the Commercial National Bank being the owner and hold-

ing as collateral, the large amount of stocks and bonds of the Eagle River Mining Co., that this committee request their permission to have an audit and statement of the books and affairs of the said Eagle River Mining Co. made.

Motion was made and carried that a committee composed of Mr. Hillyer, and Mr. Dure be authorized to incur the necessary expense for said audit.

A letter from Akerman and McManus, Attorneys for the Southland Knitting Mill, was read, in which denial was made of the Commercial National's liabilities on the notes now held against said Southland Knitting Mills and request made that said notes be canceled and delivered to the mill. This matter was discussed at considerable length after which Mr. Park moved that it is the sense of this committee that they do not feel that they are in position to comply with such request. This motion prevailed.

Meeting upon motion then adjourned."

There was introduced by the complainant the Minutes of the committee meeting held on May 1, 1915, at the office of the continental Trust Company, as follows:

"Macon, Ga., May 1, 1915.

Meeting of the committee held this day at the office of Continental Trust Company.

Present, Messrs. Benton, Dure, Park and Mr. R. J. Taylor.

Beyond the discussion of various uncollected
517 notes, no business was transacted."

There was introduced by the complainant the Minutes of the committee of May 4th, 1915, as follows:

"Macon, Ga., May 4, 1915.

Meeting of the committee held this day, there being present Messrs. Park, Hillyer, Anderson and Dure, also Mr. R. J. Taylor.

The meeting was called to consider the matter of a suit against Mrs. E. L. Martin, and after a full discussion of the matter, it was agreed that if Mrs. Martin would make full payment of the principal, interests and costs, that the bank would bear one-half of the 5% attorney's fees, Mrs. Martin paying the other one-half.

The meeting then adjourned."

There was introduced by the complainant the Minutes of the committee of November 2, 1915, as follows:

"Com. 11/2/15.

Hillyer, Dure Park, McKay, (Taylor), Benton.

Minutes of 5/4/15 appd.

Schedule of indebtedness to be turned over to Attys.—read— Appd.

Motion Bessie C. Artope note bank, make best trade possible.

Motion—all the Mallary papers be sued.

Motion—Mrs. S. B. Smith note $1848, make settlement.

Adjourned to meet 16th Nov. at 3 P. M.

Bank Bldg.—place in hands of several R. E. men to submit best bids on or by 16th.

Coml. Com.

518 W. E. Small settlement—Am. Natl. Bk. offer 10,000 for Dwg. be accepted—subject to approval of directors."

There was introduced by the complainant Minutes of call meeting on November 13, 1915, 4 P. M., as follows:

"Call Meeting. Nov. 13/15—4 P. M.
Hillyer, Dure, Anderson and McKay.
Eugene Anderson claim be settled for $3800.
J. L. Jessup appeared before Com.—proposing to turn over all he had, viz—10 shares Macon Natl. Bank and 2 houses Nos. 227-229 Cedar (?) St., renting for $30 per month & with $2500 mortgage thereon. The Com. feeling that nothing could be gained by suit, on motion it was decided to request the Am. Natl. Bk. to hold up the matter and not bring suit now pending time for Jessup to do something to liquidate or reduce the indebtedness.
J. W. Burke Co.—on motion, it was decided to accept 50c on dollar of their indebtedness.
Parties representing Southland Knitting Mills are to present their facts and arguments before O. A. Park on Tuesday & if he after hearing them and believes the bank had a good case he shall press the suit, otherwise he shall report to Com. his recommendations. Anderson & McKay—aye. Dure not voting.
Jessup 2 houses, No. 227-229 Cedar St. First mortgage $2500. Rents for $30.00 per month now. 10 shares Macon Natl. Bank stock."

There was introduced by the complainant the Minutes of the committee meeting of January 7, 1915, or January 7, 1916, as follows:

"Com. meeting 1/17/15 or (1/7/16).
519 Hillyer, Anderson, Dure, Dr. Lee, McKay.
Notes:

B. S. Westcott $15.00—Atty.
Anderson Prtg. Co. 800

275

H. Hillyer to see Mr. Burke, & get status & see that insurance policies have loss pay. clause.

Ardell Armstrong 191.24—acknowledged debt and agreed to pay $10 per month.

Mrs. Bessie Artope notes indorsed by Security Loan & Ab. as directed.

H. Hillyer report at next meeting.

G. W. Barnes—$1400—refer to Atty. to handle.

J. W. Burke, E. W. Burke—notes. H. Hillyer to see him & urge immediate response.

G. W. Barnes, W. H. Roper—$1355.42. Refer to Atty.

Rent of Bank Bldg. 1st year $900, 2 & 3rd $1800 Luther Williams.

Motion—W. T. A. that H. Hillyer ask Atty. to take no action J. M. Dunwoody until next Wed.

Claud Estes—Attys. sue.

Dr. W. B. Daniel—$9469—Atty.

S. Wiggins—400—Pay or sue.

J. Turner—$600—Accept $50 per mo. with consent of indorser.

B. A. Green—133.00—Atty.

P. C. Hull—$205.33—Hold up till one for $68.30 is paid."

Complainant offered the following memoranda:

"J. J. McKay, Esq., City. Dear John:—I send you memorandum for the minutes of meeting held this day. Yours truly, Leon S. Dure."

520 "The above is a memorandum of our meeting held on yesterday, which I send you to put

in proper shape for your minute book. Very truly yours, Leon S. Dure."

R. C. SOUDER, a witness for the plaintiff, testified as follows:

Direct Examination.

I was assistant cashier of the Commercial National Bank. E. N. Lewis was cashier; he is dead. Mr. Lewis and Mr. Cobb were active heads of the bank. Mr. Cobb also died. Mr. E. Y. Mallary was president. Mr. Mallary did not have any active part in the conduct of the detailed affairs of the bank, especially during the early history of the bank he did not take but a little bit; but took a little more active interest during the last year of the bank's existence than he had at any other time.

I was connected with the Commercial and Savings Bank prior to the organization of the Commercial National Bank, and was then with it from its organization in August 1908 up until it was moved to the American National Bank. I continued with the Commercial National Bank after the books and papers were moved down to the American National Bank; I continued with it until the 15th of August, I think. I left the employ of the Commercial National Bank at that time.

I was assistant cashier of that bank for two or three years. I continued to act as assistant cashier after I moved down to the American National Bank, and until I left the bank. I worked with the American National Bank about eighteen years ago, I reckon, for
521 a short while. I was not in their employ after I went with the Commercial National Bank.

After I left the employ of the Commercial National I did not go with the American National Bank at all. Shortly after I left the Commercial National Bank I came, as head of the collection department, with Hardeman, Jones, Park & Johnston. I am still so employed.

The books and records of the Commercial National Bank which were being used actively at the time were moved to the American National Bank Monday morning, August the third. The old books were kept at the Commercial National Bank building in the vaults of the Commercial National Bank. We brought down simply the active books. I was familiar with all those books. These are the books (pointing out several large books). I assisted in getting those books up here for use. After I came down to the American National Bank with the Commercial National Bank, Mr. Lewis, John DeBorde, W. R. Woodward, Cecil Todd, C. A. Cunningham and Cecil Thorpe came with the Commercial National Bank. E. N. Lewis, as cashier—I don't know whether I can recall them all correctly or not—W. R. Woodward, paying teller; John M. DeBorde, receiving teller; Cecil Todd as bookkeeper; C. A. Cunningham as bookkeeper; Cecil Thorpe as note teller and collection teller, and E. Y. Mallary, Jr.,—I am not just clear whether C. A. Cunningham came down there as bookkeeper—or E. Y. Mallary, Jr.—but he was there in the capacity of bookkeeper—or I am rather inclined to think maybe E. Y. Mallary, Jr., was there—as bookkeeper or stenographer, to the assistant cashier. That is all, with the exception of the Vice-President. All the employees I named came down to the American National Bank. We were moved down there on Monday, August 3rd; when we got there we were assigned a certain part
522 of the bank—my recollection is that we had assigned to us three windows, the three last

windows, we had a window for the paying teller, one for the receiving teller, and one for the collection teller, and note teller; I know we had three windows where the public came and were waited on—they were regular banking windows. The bookkeepers were given tables where they could operate their books. The note teller and the cash tellers' windows I know had cage around them.

The people who came down there to that bank, came with the same positions as they had up there.

If a man came in and wanted to check out his bank balance, he was asked to leave his pass book to have it balanced, to see if it corresponded with our books. He would leave it to have it balanced, and was told it would be ready the next morning,—or sometimes a man came in to find out what his balance was—didn't have many checks and asked them what the books showed, and if they agreed he could draw his check. If he had a small check—we had some money,—say forty or fifty or a hundred dollars maybe, it would be paid from the window—drawn on the Commercial National Bank, and paid in cash through our window, where the check was not too large. If it was a big check we would either give him a check on the American National Bank, signed by an officer of the Commercial National Bank, or O. K. the check and tell him to present the check to the paying teller of the American National Bank who would cash it. The customers drew their own checks. The accounts were not transferred to the American National Bank. The checks were drawn on the Commercial National Bank. If the checks were presented to the American National, they were sent to the Commercial to have them O. Ked. At the close of the day's business
523 the Commercial National Bank had a settlement with the American National Bank. That settle-

ment was made in this way: The American National Bank would furnish us all the checks that had been cashed by the paying teller of the American National —totaled with adding machines, the list on each batch of checks. They were taken by us and verified and the American National Bank given a check for them, and those checks charged to the various customers. The checks were returned to the Commercial National Bank by the American.

The American was given a check of the Commercial National on the American National. That course of business continued during the time that I was there. The Commercial National Bank received some deposits during the time I was there. Those deposits were handled the same way that deposits were handled prior to the time of coming down there. Our cash that we brought down there from the Commercial National Bank building, was not turned over to the American National Bank. None of our assets were turned over to the American National Bank, except for our credit.

We made deposits in the American National; at the conclusion of business, if we had taken in checks, on the Fourth National Bank, and on different banks, we made the deposits to the credit of our account in the American National. We made regular deposits in the American National of collections as we made them. We kept up the practice of making these daily settlements while I was there. As to the Clearing House end of it, we cleared, I think, for ten or twelve days after we moved down there; I mean by clearing this:

The clearing house is a local organization, that on a certain hour each day, all the banks carry a
524 list of checks on the various banks to this organization, and settlement is made by the manager of the Clearing House; in other words, the

bank who loses, gives a check drawn on it in favor of the bank that has the most checks.

The Commercial National Bank was regularly cleared for eight or ten days I know, I don't know the exact number. It made collections for quite a long while on our own paper.

We did not handle any paper sent to us for collection; we turned them over to the collection department of the American National Bank. We had a runner out and collected all the items owing the Commercial National Bank. When we collected money on these items we credited the loan and discount tickler and made the deposits in the American National to our credit.

We had items in others banks. They were either credited through those banks' accounts or checks drawn in settlement of them. We had balances with various New York Banks and other banks. They were checked out to the order of the American National Bank. This was not done immediately, it was done as soon as practical, as soon as we could get the statements reconciled showing the exact balances; and a good many of the banks credited interest on standing balances, and we had to get a statement before we knew exactly how much they were. We had an active account with the National City Bank of New York, and with the Seaboard National Bank. We had an account with the Coal & Iron Bank, but it was not regarded as an active account. We would draw some checks, but we did not regard that as one of the most active accounts we had. I don't know how long we continued to check on these New York
525 Banks. The register will show that. I think it probably lasted about ten days. The expenses of the Commercial National Bank after we came down to the American National Bank were paid by cashier's checks, expense vouchers, drawn on the Commercial

National Bank. That took care of the salaries as well as all expenses. That (identifying book) is the receiving teller's cash book of the Commercial National Bank, and it covers the period from June 9, 1914, through August 7, 1914. During the period in there from August 3rd to August 7th,—the cash in the hands of the receiving teller only covered one day; he turned it over at night to the paying teller. He showed that he had money every day. On August 3rd he had in individual deposits $8,163.70. He had $22.00 savings deposits on the same day. He had individual checks drawn, Commercial National Bank, $2796.29—that is customer's checks drawn on the Commercial National Bank. They were either paid by him or received there, people deposited them. And on August 3rd, he had in silver in the drawer $211.50, and in dimes $48.40, and in nickles in drawer $61.50; in coppers $1.85—$1712.00 in currency; and in clearing house checks $1954.43. At the end of the day his book was turned over to the paying teller and he checked him up to see if he had that amount of cash; he put it in his cash then; the paying teller deposited it, if he had any excess money. The next day he had $3433.31 individual deposits, that is, on August 4th. There were no savings deposits that day. He turned over to the paying teller that night $2014.74; he had in clearing house checks that day $743.11; those are checks on other banks. He got checks on the Commercial National Bank that day amounting to $420.42. On August 5th we had $4878.66; we had no savings that day.

526 There was turned over to the paying teller that day $1530.10 cash; we had checks on other banks of $1021.58 on that day; we had on the Commercial that day $1762.79. On the sixth there were individual deposits of $5364.12. We had no savings

that day. We turned over $5204.13. We had no items on other banks. That day we had individual checks on the Commercial National of $30.34. We had $616.39 individual deposits on the seventh; and $300.00 savings deposits. That was the day the book closed, and we had no cash that night. That book closed the seventh.

The work of the receeiving teller was then consolidated with the paying teller's window—on the paying teller's book. This (identifying) is "collection teller's cash book No. 7; it is marked Collection Teller's Cash, 7, Commercial Natl. Bank.'

Loans were paid of $4243.79 on August the third. I mean notes of customers due the Commercial National Bank; that was through the note teller or collection teller. At the end of the day his cash was turned in to the paying teller. On that day he turned in $1811.59 actual cash—clearing house checks or cash. The next day, the third, he had $1088.58 individual checks drawn on the Commercial National Bank that day, also had individual deposits of $204.40; also on items sent for collection, for customers, which were paid and credited to their account. He collected $3.75 interest, and $1.85 exchange; that is on August 3rd.

On August 4th we had loans paid of $1085.00, and $46.20 interest collected, and $.45 exchange. There were individual deposits of $70.54, and he turned in $1406.21 in cash.

There were individual checks of $49.46 on the
527 Commercial National Bank, and $823.50 in checks on the various clearing house banks. That is all on the 4th.

On the 5th we had savings deposits of $104.10—that was an item sent for collection for a party who only had a savings account, and she gave directions when it

was paid to credit it to her savings account. We had other deposits, individual deposits of $56.20—and we had $8025.23 in loans paid; we also had $1.11 interest and $2.25 exchange. We also had savings checks of $4785.72, these were checks on savings deposits and individual checks of $1754.31. We had clearing house checks of $763.62, and other various cash currency and cash items.

The next day we had loans of $84.99, that was the sixth. Loans paid $84.99; $.73 exchange, and individual deposits of $38.40. There were individual checks on the Commercial Bank of $396.31, and $169.39 cash that night. That cash was turned over to the paying teller every night.

On the 7th there were $310.40 in loans paid, and $.35 exchange. Individual deposits of $.99. There were drawn on the Commercial National Bank $106.00 in individual checks. He ceased to keep this book on that day, that was August 7th. It was consolidated with the paying teller's book. The paying teller's book showed it after that time. This book was consolidated with the paying teller's book, I say. That (identifying) is the "Mail Teller's Cash Number 7." The mail teller handled all the transit items—items sent to the Commercial National Bank for credit of various banks around in Georgia, and other banks in the East. Cash items,—a bank in Baltimore would send us a letter, a thousand dollars worth, cash items to be remitted in cash, and credited to their account, and the mail teller handled all of those checks. He continued to do business; on August 3rd he had remittance letters of $42,580.27—items from other banks for credit to their account.

528 All of them—the Macon items, were made up into what we call the clearing house, and

they were turned over to the paying teller; the items on other banks out of town were written up and charged to the accounts of those banks with the Commercial National Bank. $32,100.95 of those checks were remailed all over Georgia for collection, as cash items. We had also $9538.25 composed of checks drawn on various banks in Macon and bank checks on the Commercial National Bank by other banks. They were turned over to the general ledger bookkeeper, and charged in this book to what we call sundry charges—checks on the Commercial National Bank, turned over to the Commercial National Bank's general ledger bookkeeper, and charged to the various bank accounts—the checks on the clearing house were collected through the other banks; there were $938.07 individual checks on the Commercial National Bank.

There were charged up to the various accounts on the books of the Commercial National Bank, on the customers' accounts.

There is a cash item of $3.00, probably a Post Office money order, that did not get into the sundry charges for some reason and was handled as a cash item, and put in the proper place the next day. August 4th seems to be the last day that the mail teller operated; on that day there was $15,774.20 handled. They were handled the same way as the others. This book seems to have closed about that day. We evidently did not get any after that date. The banks were notified—statements sent to them and they were notified that the Commercial National Bank would not handle these items any more, that we were going out of business after that.

529 That (identifying book) is paying teller's cash number 7. On August 3rd we started with $30,668.78 in cash—that is the paying teller's cash—

and would be all of those books that we have gone over—combined,—the total, the individual checks and deposits, all the books consolidated into this book.

We transferred the items from the other books into that, and consolidated them in .this.

We started out with $30,668.78 cash and individual deposits of $8,368.10; total savings deposits of $22.00 and total loans paid $4,243.79; it shows total exchange of $15.14; total interest of $3.75, and total saving checks of $454.93, drawn on the savings department of the Commercial National Bank.

They were charged to the various customers accounts. We paid them then before we charged them up. I don't know exactly how these particular ones were paid. If the check was presented at the window, and if the paying teller had enough money, he paid it; and if he didn't, he would O. K. it and send it to the paying teller of the American National Bank, and enter it to be accounted between them that afternoon. There were two savings checks that day, one $454.93 and $2,675,80, making a total of $3,130.73; the individual checks that day were $25,948.48, $1,088.58, $938.07 and $2,796.29, making a total of $30,771.42. $30,771.42 was the total of them, and he wound up that night with cash of $14,041.81; that was August 3rd.

I don't know whether any checks were paid by the American National Bank that day or not; I don't know whether the American National Bank was given credit for anything during that day, it would not show there. The credits here are shown in totals. It shows total credits of $80,682.86. I don't know how much of that was the American National Bank's, or whether any of it was.

The next day, it starts with $14,041.81; it wound up that night—took in individual deposits $3,489.00; $1,-

085.00 in loans paid; $17.25 in exchange, and $46.20 interest, and wound up that night with $17,137.57 in cash.

The paying teller that day alone paid out $19,492.55. The others paid out—let me add it up—there are two items $420.42 and $49.55, making $469.88, making a total paid out of $19,882.43. That was August 4th.

On August 5th we started with $17,137.57 in cash. We took in savings $104.10, and individual deposits $4,934.86; and loans paid $8,025.23. We had exchange of $5.64, and interest $1.11.

I can't tell from this book whether we got any money from banks that day. We collected sundry credits of $230,664.62; not necessarily took it in—that included checks drawn on the American National Bank and credited to their account. And against that, we had sundry charges of $207,000.43. That appeared on the general ledger, sundry remittances, general ledger credits do not appear on individual accounts.

It represents credit charges to various banks, not necessarily banks, it might have been credit to—yes, it would have been bank account credits.

We had sundry charges of $207,000.43, accounts charged to various banks on the general ledger; there were individual checks $34,443.36, and saving checks of $13,376.90. We do not seem to have any checks on other banks, and wound up with $6,052.64.

On August 6th we started with $6,052.64, and
531 we had general ledger credits of $180,494.25, and individual deposits of $5,402.52. We had exchange of $90.34 and interest $.73. No loans were paid that day. We had general ledger charges of $142,131.36. We had savings checks of $15,476.92, and individual checks of $24,151.34, and wound up with $10,281.36 in cash.

This is the seventh; it starts with $10,281.36, and had savings deposits of $300.00, and individual deposits of $617.38, and loans paid $310.40. It shows exchange of $23.40; general ledger credits of $88,861.29 that day. It shows savings checks of $6,932.17 on the Commercial National Bank, and individual checks of $17,520.39. There are general ledger charges of $69,825.19, and cash on hand $6,116.10.

My recollection is that the receiving teller's and the note teller's books were closed on August 7th; I couldn't tell you from this book; they are all exactly alike, you see. I think everything was thrown into this book on the morning of the 8th, though.

Well, the 8th starts with $6,116.10; general ledger credits show $126,454.13, and interest of $2.03, and exchange $.30. It shows loans paid this day $1,700.00, and individual deposits of $231.55. It shows bank charges against that, general ledger charges of $114,027.34, and savings checks of $899.65, individual checks of $14,872.69; with cash on hand of $4,707.43 at the close of business, on August the eighth. That book was kept and the accounts continued to run the same way through September 30th, 1915.

By checking up each day, I can point out in these items the business that was done each day, by reference to this book, clear up to September, 1915. I have not looked in between these dates at all the pages, but it looks like it is dated straight along through
532 that date. During the time I stayed there it was kept that way. I have read almost through the period that I stayed there, through August 15th. After a certain period they did not have any cash at all, just the record of notes paid and interest collected. It seems to have had some cash as late as August 25, 1914, actual cash. I find deposits made along on there,

the last item of deposits seems to be September 8, 1914—I see on that date a deposit, individual deposit $132.73. By reference to that book I can find out how much was deposited on any day, and what business was done during the period through September 30, 1915.

This is the expense register; that register was kept after August 3rd. We had an expense called 'building account expense,' and when we issued a voucher, we kept two expense registers—kept the building account expense in the back, and the expense account proper in the front of the register. The last entry in the bank expense proper is December 31, 1914. That voucher, register number 2000, is for salary $57.50. All the expenses of the bank were paid and shown on that register. They were paid by voucher,—check drawn on the Commercial National Bank, or cashier's check—the bank's own check on itself.

These are expense vouchers covering that period from August 1, 1914, through December 31, 1914.

This is dated August 15, 1914, voucher number 1952 for $919.98, signed by E. N. Lewis, cashier. It includes salaries through August 31, 1914, E. N. Lewis $208.32; R. C. Souder $166.66; W. R. Woodward $115.00; J. M. DeBorde, Sr. $115.00; C. A. Thorpe $90.00; J. C. Tart $80.00, E. Y. Mallary, Jr. $60.00; Ida Durham $55.00 J. M. DeBorde, Jr. $30.00, making the
533 total of $919.98. I mentioned a while ago that C. A. Cunningham came down there, but evidently, from this voucher, E. Y. Mallary, Jr., came, and Cunningham did not. This includes salaries through August 31, 1914. That is, expense voucher, cashier's check, and the bank's checks on itself. It is signed E. N. Lewis, Cashier, and drawn on the Commercial National Bank, and it is cut paid. It is the Commercial National Bank stamp.

Here is one item dated August 11, 1914, to the Atlantic Ice & Coal Corporation for $12.00, signed building account, R. C. Souder, Assistant Cashier. I don't think the building and maintenance accounts were actually kept separately. I think the vouchers, the register was kept separate so we could tell the nature of the charges and how much was expended in the operation of the building. The book shows two places for expense accounts,—shows the building account in the bank and expense proper in the front. The building account was kept through December 12, 1914, and the other one until December 31, 1914.

Only the items that had reference to the building proper were carried in the building account; for instance, I think, janitor service and coal and water and the towel supply for the building, and cleaning powders and brooms, and things like that, and lights and water and ice, and that covered repairs.

Here is voucher number 1953 dated August 15, 1914, payable to the order of Alonzo Richardson Company for $75.00. It is for part payment on bills; there is one dated August 22, 1914, voucher 1955, payable to the order of Alonzo Richardson for $50.00. It is part payment on account. And another one September 2, 1914, number 1956 to the order of Alonzo Richardson & Company for $296.95, balance on audit.

Here is one September 14, 1914, number 1957, payable to the order of the Western Union Telegraph Company for $8.56, for telegrams,—bill for the month of August, number 1961, September 14, payable to the Macon Telegraph Publishing Company for $108.00, for advertising.

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I don't think the items of the bill for advertising are attached in there. This is a salary voucher Number 1989, payable to the order of salaries, for

$291.50—approved by W. T. Anderson, for services to August 1, 1914. This one is number 1988, dated November 14, 1914, payable to the order of salary, for $57.50, signed J. M. DeBorde, teller; one dated October 31, 1914, number 1980, payable to the order of salaries for $157.50, signed E. N. Lewis, cashier—to E. N. Lewis $100.00 and J. M. DeBorde $57.50, making the $157.50. October 27, 1914, voucher number 1979, payable to the order of G. G. Hardeman, for $10.00, for use of hall for stockholders meeting on August the 22nd and September the 30th, two meetings at five dollars each. Voucher number 1987, dated October 22, 1914, to the order of Hansell Hillyer for expenses to Atlanta October the 8th, 9th and 10th, in the matter of the Capitol Savings Bank and J. P. Stevens Engraving Company against Virgin for $15.00. The total list amounts to $4,672.07, that includes the building expense and the other expense, too.

These checks which you hand me are checks of the Macon Clearing House Association. These are checks that the manager of the clearing house draws on the various banks as they lose in the morning settlement. They all bring their checks to each other, and the one that loses, get a check drawn on it. The one that has the most checks, the other one makes settlement for the difference. These checks are given in settlement of the difference. This is one on the Commercial National to pay to the order to the Fourth National Bank $14,717.30, signed G. C. McWhirter. It meant that the Fourth National Bank had that many more
535 checks in amount on the Commercial National Bank than we had on them. That is the check given through the Macon Clearing House in settlement of the balance. This one, dated August 4th, is that the Commercial National Bank will pay to the order of the

Macon National Bank $3,456.86, signed the Macon Clearing House Association G. C. McWhirter, Assistant Manager.

This one is August 4th—the Commercial National Bank will pay to the order of the Citizens National Bank $24,896.12, signed by the Macon Clearing House Association by G. C. McWhirter, Assistant Manager; August 5th, 1914, the Commercial National Bank will pay the Macon National Bank $17,495.74, signed G. C. McWhirter; another one August 8th, 1914, the Commercial National Bank will pay to the order of the Fourth National Bank $15,931.61, signed G. C. McWhirter, Assistant Manager; August 6th, 1914, the Commercial National Bank will pay to the order of the Macon National Bank $6,784.16, signed the Macon Clearing House Association, by G. C. McWhirter, Assistant Manager; this one August 6th, 1914, the Commercial National Bank will pay to the order of the Fourth National Bank $28,726.43, signed Macon Clearing House, by G. C. McWhirter, Assistant Manager; August 7th, 1914, the Commercial National Bank will pay to the order of the Fourth National Bank $21,543.97, signed the Macon Clearing House Association by G. C. McWhirter, Assistant Manager; another one dated August 7, 1914, payable to the order of the Macon National Bank $2,545.38, signed the Macon Clearing House Association, by G. C. McWhirter, Assistant Manager; one dated August 1st, 1914, the Commercial National Bank will pay the Fourth National Bank $697.55, signed by the Macon Clearing House Association by G. C. McWhirter, Assistant Manager. Here is one that has no date, but is paid August 3, 1914—the Commercial National Bank will pay to the order of the Citizens National Bank $10,315.90.

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Those checks were paid; the paid stamp is cut in there. That cut—through stamp belongs to the Commercial National Bank.

The book that you show me is the draft register on the Coal & Iron National Bank.

From August 3rd through August 7th, we drew drafts on the Coal & Iron National Bank in settlement of collections,—made by the teller—tellers collection. They are itemized in that book. There are seventeen items entered there after August 3rd. Edgar C. Bruce is the first one. Settlement with the American National Bank was made daily. The American National Bank receiving teller, or paying teller would take in a lot of checks of the Commercial National Bank, either having paid them or received them on deposit for various people, and they would make an adding machine list of these checks and deposits and turn them over to the Commercial National and they would verify them, and if they were correct, they would draw a Commercial National Bank draft on the American National Bank in settlement of them.

The front part of this book is the draft register on the National Bank of Commerce of New York City, and—the other half was used as a draft register for checks drawn on the American National Bank.

This begins August 3rd, 1914, and it seems to run through March 1st, 1915.

These are the checks drawn by the Commercial National Bank on the American National Bank. The first one is signed E. Y. Mallary, Prest., and the
537 next one is signed by E. N. Lewis, Cashier; and the next one is signed R. C. Souder, assistant cashier; and R. C. Souder and the next one R. C. Souder, and the next one R. C. Souder, and the next R. C. Souder, and the next R. C. Souder—all assistant cashier; and

the next one E. N. Lewis, and the next one E. N. Lewis, right on through, signed by both of us, and then come on down later and they were signed by Mr. Lewis and J. M. DeBorde, teller. Those checks were paid. I have an adding machine list of them; they total $1,100,132,19.

A good many of these checks show either on their face or back what they are given for. Here is one August 11, 1914, for one dollar made payable to the order of ourselves, on the back it shows New York Exchange sent to the Fourth National Bank of Atlanta, Georgia, for our credit. It is dated August 11, 1914, voucher No. 448.

Here is one dated August 11, 1914, voucher number 449, pay to the order of ourselves, $3180.05, signed E. N. Lewis, Cashier, for New York Exchange sent to the Traders National Bank of Birmingham sent them for our credit.

Here is one August 5th, 1914, for $87.65, payable to the order of the American National Bank—this was for checks to the Parker Railway News Company for $59.75, W. R. Deal $5.13, M. R. Ross $.98; K. P. Moore $2.79; J. H. Virgin $15.00; Macon Cooperage Company $4.00; making the total $87.65.

Here is another one No. 491, dated August 15, 1914, for $140.25, signed E. N. Lewis, Cashier,—this representing checks to the First Baptist Church $20.00, Cecil E. Crump $35.50, Hubbard Undertaking Company $42.75, C. A. Thorpe $2.00, McEvoy Book & Stationery Company two checks $20.00 each, making $40.00.

538 Itemized list means that the American National Bank presented checks of these parties to the Commercial National Bank for payment. Checks drawn on the Commercial National Bank were given in settlement of those checks.

Those checks seem to be all entered on the register. Of course, I would have to check them up to tell whether, but the numbers run along beginning at 401, and seem to run right on in regular order through 765, through that period of time.

This book, is the Miscellaneous Check Book of the Commercial National Bank, for the use of drawing checks on various banks.

This covers the period from January 29, 1914, through August 13, 1914. The first check is dated August 6, 1914, number 4515, to the order of the American National Bank of Macon, Georgia, for $670.77. It was drawn on the National Bank of Commerce of New York. That check, evidently, was never used, because it was not signed, and it was pinned back in the book, and should have been marked void.

That one is drawn on the National Bank of Commerce. I presume it was given the American National Bank, in checking out our balance. That is dated August 20th, drawn on The National Bank of Commerce, signed the Commercial National Bank of Macon, E. N. Lewis, cashier.

Number 4518 is dated August 5, 1914, was a check on the Broadway Trust Company of New York City to pay to the order of the American National Bank of Macon Georgia, $1060.35. The assumption is, that it was drawn for a balance; the check does not state what it was for. The fund realized from those checks was deposited to the credit of the Commercial National Bank with the American National Bank, in the regular account. The others about the same way. There seems to be about a dozen of those checks, the rest are
539 drawn on the various banks payable to the order of the American National Bank. One on the National Exchange Bank of Augusta, and one on the

Mutual Alliance Trust Company of New York. They run from August 3rd, through August 13th.

The list attached to one check, number 751, payable to the order of yourselves, and drawn in favor of the American National Bank, signed E. N. Lewis, cashier, and J. M. DeBorde, teller, seems to be a typewritten list of names with the amounts opposite them. It was a transfer of the balance left on the books of the Commercial National Bank, transferred to the American National Bank on December 15, 1914. Number 711, dated November 6, 1914, for $2,919.42, payable to the order of ourselves, also has list attached that seems to be a list of parties, names, with small balances left to their credit, and the amount opposite each name and the balance transferred to the American National Bank ledger.

I can't tell by looking at them whether they were savings account or not but I am inclined to think, that they (indicating the first batch handed him), were savings account, and that these are active; you can't tell by looking at them. Anyway, one represents savings accounts and the other active. They represent small balances that had not been called for up to the time of that check.

I don't know whether or not there had been any transfer of accounts up to that time—up to the time these checks were given. I don't think there had been. I can tell by looking at the book.

This is the general ledger of the Commercial National Bank. This represents general bank accounts, of country banks, individual accounts, National Bank notes outstanding, interest, exchange, teller's cash, individual and savings deposits, and time certificate deposits,—each one separate. It shows total savings deposits, the amount outstanding, cashier's

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checks outstanding, certified checks, and bills payable. It shows the amount of the several banks you do business with, separately. Yes, sir, there is an account with the American National Bank of Macon on that book. It is on page three of the second part of the book, there are two different transfers in this book.

The first dated August 3rd, we drew checks on the American National Bank aggregating $25,488.13. We credited them with those items.

We had three deposits that day—we made three separate deposits in the American National Bank for their credit. We drew checks aggregating $25,488.13. There were deposits of $4,503.90 and $10,415.00 and $1,373.50. At the close of business we owed them $9,195.73. The next day we made deposits aggregating 3,800.00—two deposits $315.18 and $3,528.29, aggregating $3,843.47—in round figures thirty-eight hundred dollars.

We drew checks on the same day $24,800.00, making $30,248.38 we owed them.

The next day, August 5th, we drew checks amounting to $159,796.98. We deposited a total in round figures of $48,000.00. We made five deposits that day; at the close that day we owed them $141,774.67.

These checks that you asked me about a while ago, are the ones entered up here. The total will show on the register cash book, and each day's total shows here. These checks that you have shown me, aggregating something over a million dollars, are the checks whose total is shown on this ledger.

541 The next day, the 6th, shows checks drawn of $107,000.00 in round figures, and deposits of $27,600.00; and we owed them at the close of business that day $221,200.00,—all those are given in round figures. On the next day we showed checks of $32,-

700.00—round figures—and deposits of $14,900.00, and we owed them at the close $239,000.00.

On August 8th, we drew $9,800.00—round figures—and made deposits aggregating $14,500.00; and we owed them at the close $324,059.40.

On August 12th, we owed them $360,884.28. We continued that account in the same way. On the first of September, we owed them $494,863.33. The book shows that we deposited so much money and drew so many checks; and the difference between the amount deposited and the amount of the checks was so much against the American National Bank.

So far as appears from the books they show that we owed the American National Bank $493,416.51, to the credit of the American National Bank on September 30, 1914. The last one on that page is December 31, 1914, and it shows $530,320.58 to the credit of the American National Bank. We charged them with $8051.88. We deposited $8051.88, and we didn't draw any checks. The account is carried from there to a new book. I don't think I brought that book; we have got it over there. That account was carried to another general ledger. I have not got that over here at this time.

That book (indicating) is individual ledger number 15, covering accounts from L to Z. I mean by 'individual ledger', accounts of individual depositors—bank accounts; it represents the Commercial accounts.

542 We kept a separate ledger in which we had savings accounts. We had a ledger in which ran the other letters A to K. That is it.

On August 3rd, I see a deposit of $2.93 of H. G. Leak; you see there are only about twenty names on this page—only one deposit; no deposit on August 3rd.

Here is the account of Mrs. J. V. Langford, Superintendent, on August 4th a check for $142.80 balanced her account.

There does not seem to be a deposit to anybody else on this page; here is the account of E. C. Latimer, his account was closed August 7th; he drew a check for the amount of his account and it was closed up. There were plenty of checks drawn without closing the account. None of the accounts on that page were transferred to the American National Bank, unless they drew the balance and re-deposited. The Commercial National did not transfer any of the accounts on that page to the American National. There were a good many checks along there without closing the accounts.

Here is Charles Lane—we closed his account—a check of Charles Lane closed his account, the books were balanced the night before, and closed the account August 4th.

On August 3rd, we credited the Macon Cooperage Company $227.25, with a balance of $3,047.79. On August 4th they drew checks aggregating $135.00, and on August 5th they left their book on the night of August 5th, and showed a balance of $2911.39, and checked out the next day, August 6th. None of these accounts during that period were transferred to the American National by the Commercial. I cannot find any accounts on there that were transferred by the Commercial National to the American. There is nothing on here to indicate it.

I find deposits running along there on the
543 accounts, I see four deposits on August 14th to different credits, different accounts; four in one day. These balances here were not all checked out up to that time. They are still going right along. This book covers a period from March 23rd, 1914, to

August 15, 1914. These accounts which had not been closed were all transferred to another ledger—from A to K and from L to Z were all put in one ledger, instead of two ledgers, after August 15th, they had only one ledger, that carried the accounts from A to Z. That book was opened on the night of the 15th, which was evidently Saturday, because the next day I see is August 17th. I find where some of the accounts were closed on that ledger. I have got the R's, and part of the S's, and some of them were closed, but none transferred. They drew out the balance. You will see here everytime the books were balanced, and checks returned, it is marked balanced. This is through October 19, 1914,—the balances are all small, practically taken out. Over here on November 6th I see some of the accounts are transferred there; they are transferred to the books of the American National Bank. They are stamped with a rubber stamp opposite them indicating that they have been transferred, dated November 6th—I see one was transferred November 4th. These balances that were transferred November 6th are very small—running, the first one $15.00, the next one $5.00, the next one $.30, the next one $.04, the next one $.27, $.10, the next one $.86, the next one $.88, the next one $.64; the next one $11.50, the next one $24.59, the next one $10.14. That was the balances that had not been checked out and transferred to the American National Bank that day. I see here J. M. Talley $1.97, and Talley & Heyward $5.15;
544 they were both transferred. The most of them small balances that had not been checked out.

We have a savings bank book; this is the savings ledger, it is marked Domestic Tickler Number 1, C. N. B.—Savings Ledger.

Here is one M. A. Jordan—checked out on August 25th, marked with the rubber stamp "account closed

and pass book destroyed." We require them to turn in their pass books. These were regular savings accounts where deposits were entered on the book. Checks were entered on the books too, but we required the pass book to be presented before any check was drawn by the customer.

Here is one Leo D. Sheridan—$130.19—checked out August 11th, marked "account closed and book destroyed." The next one is Albert E. Sheridan, his balance on August 7th was $.90, and his account was closed on this date, marked "closed and pass book destroyed."

Those savings deposits are entered in this book. Whether any of these accounts were transferred to the American National Bank I do not know; I will look and see. I don't see any on this book here—yes, here is one, Mrs. Mattie L. Speir, $1.36 balance, marked "transferred to the Books of the American National Bank on November 4th." Those entries are all made along here. They all speak for themselves, and show the disposition of these various accounts; that is, show whether the pass books were handed in and the account closed, or whether the accounts were transferred to the books of the American National Bank.

That book is the statement book; that is what we call the president's book—a transcript of the general ledger in totals—from the general ledger—made up for the benefit of the officers at the close of each day's business.

On August 3rd, the condition of the bank was:
545 Resources: Loans and discounts of $1,148,905.30; overdrafts, secured and unsecured, of $7,738.19; United States Bonds to secure circulation $200,000.00; United States Bonds to secure deposits $50,000.00; premiums on United States Bonds $4,000.00; banking house, furniture and fixtures $75,000.00; it shows interest paid

$3,564.47; expense account $7,644.72; teller's errors $14.25; due from approved reserve agents $15,695.26; due from other national banks, $35,081.31 State banks and bankers $107,951.16; cash on hand $14,041.81; redemption fund with United States Treasurer, five per cent of circulation, $10,000.00; giving total assets of $1,679,636.47.

Against that is:

Liabilities: Capital stock $300,000.00 paid in; National Bank notes $200,000.00; Surplus fund $80,000.00; interest account $4,944.05; exchange $470.62; undivided profits $21,239.74; dividends unpaid $432.00; time certificates of deposit $73,597.24; individual deposits, subject to check, $250,520.25; savings deposits $72,218.40; United States deposits $43,888.66; certified checks $27.50; cashier's checks $555.00; due to approved reserve agents $66,497.69; due to other national banks $106.579.07; due to State banks and bankers $97,409.86; bills re-discounted $176,256.39; bills payable $185,000.00; giving total of liabilities $1,679,636.47.

That was August 3, 1914, at the close of business. That shows every day the condition of the bank at the close of business. That book seems to have been kept through September 30, 1915.

546 The amount that we drew from the American National Bank appears in these statements as due to other National Banks.

That item from August 3, 1914, seems to increase right along. The individual deposits are decreasing along every day; from that time on they seem to be decreasing every day. August 1st they were $271,885.97. On September 30th the individual deposits, subject to check, were $36,609.73. That meant that all the other accounts had been closed or paid off. In the savings account on August 1st we had $75,327.13; on

September 30th the savings deposits were $5,400.16. We were due other National Banks on August 1st $92,097.38. On September 30th, due to other National Banks $493,-416.51.

I could not tell from this book what banks we did owe at that time—that would depend on whether or not we had any notes outstanding in New York banks that had not been taken up; I can get the individual ledger and tell what it is, but I can't tell from this book. The individual ledger or the general ledger will show exactly what bank it is due to. And that will show how much the American National Bank had against us. The amount here shown on this book is $493,416.51. This item corresponds with the item on the general ledger as being the amount due the American National Bank—it corresponds with the amount due to other National Banks; this is just a transcript from the other book, it has got to agree with the general ledger—that is the balance as taken from the last page of the general ledger.

This appears to be a statement issued to the American National Bank, covering the account of the Commercial National Bank for the month of August, 1914.

Under debits "D," all along there, are drafts drawn on the American National Bank. Those numbers are the draft numbers they are charged up by numbers.

547 Those are the same checks I had reference to over there a while ago; 402 appears to be the first number, for $10,315.90. That one is charged up there. That does not run right along exactly in regular order; most of them do, some of them may have been out and not got it, and some other one had been paid before it came in; the numbers of the checks all show in this statement. Those are the same numbers, in this statement, which appear on the checks

that you have already inquired about. Those items of credit are the checks in detail (indicating on statement) and that is the total (again indicating on statement), these (witness again indicating on statement) are deposits made by the Commercial National Bank with the American National Bank.

That appears to be a monthly statement. Banks usually at the end of the month render a statement just as most banks do to individuals; and this is the statement rendered, with the returned cancelled checks, and it is verified and any difference that appears between your statement and theirs is reported. That is the statement by the American National Bank to the Commercial National Bank, showing the status of the account as claimed by the American National Bank, accompanied by the vouchers drawn on that bank.

In the event there should be a difference between the bank rendering the statement and the bank receiving the statement, there is a little form that goes along with the statement that reads your account rendered to such and such date, agrees with our book, with the following exceptions, and we note the exceptions and return it to them. It is returned to the bank and their attention is called to this difference. That is the form used. The form usually accompanies the statement; that is just the same that is sent out to customers with the statement, and they send those reconcilements back. That is the form of reconcilements sent out. That
548 is the form that banks usually send out.

These reports cover the month of August. The amount shown there in August was $495,083.99. The balance shown September 30th was $492,962.03. There seems to be a slight difference between us on that. There might have been some checks out that had not been charged up. It shows very little difference,

a few cents difference. This runs through March, 1915. On March 27th, the balance was $462,634.71 against the Commercial, and in favor of the American National.

This is the reconcilement of the Georgia National Bank of Athens—from the Georgia National Bank to the Commercial National Bank of Macon, Georgia.

These reconcilements were returned to us by other banks, returned to the Commercial National Bank. That is the stock ledger of the Commercial National Bank; the current stock ledger, showing the amount of outstanding stock and each stockholder.

This seems to be correspondence of the Commercial National Bank with its various customers, both banks and individuals. There are a good many originals, and some copies; some copies of our letters to them; their originals in reply. The original from the customer to the bank, and the carbon from the bank to the customer; for example a letter to James R. Sanders, Washington Avenue—just general correspondence between the bank and its customers. This seems to be correspondence between the bank and the Comptroller of the Currency. The original from the Comptroller of the Currency, and carbon copies from the bank to the Comptroller.

549 These are advices from the Treasury Department and from the Assistant Treasurer of the United States for money being received and transferred—letters between the Treasurer's office and the bank.

That is correspondence between the bank and various banks. The originals from the other banks and carbon copies of our letters. These are letters from individuals to the Commercial National Bank.

W. A. Little is a stockholder; C. H. Brannon; A. Newstead; I recognize a good many of the names as stockholders, John F. Lewis and A. F. Birdsey.

Those are replies to various stockholders—carbon copies of the replies.

That book is the current general ledger; it is general ledger No. 9 of the Commercial National Bank; it doesn't seem to bring the acount of the American National Bank up to date; it shows that on July 2, 1915,—there is evidently another transfer from that—there it is in that same book, to December 31, 1918. That is the last entry on it.

On December 31, 1918, it shows to be owing by the Commercial National Bank $308,842.35. I think interest is probably figured up to one period; I don't think it was ever calculated to the end of the period; the book is marked interest paid up to a certain date—to March 31, 1917, $5,441.70. There does not seem to be any interest added since then.

CREED TAYLOR, witness for the plaintiff, testified:

Direct Examination.

My name is Creed Taylor. I am Assistant Cashier of the Federal Reserve Bank at Atlanta, Georgia; that is, at the present time. I have been connected with that institution about a year. My business before that time was Public Accountant.

I was associated with Alonzo Richardson &
550 Company, Atlanta. I had been with Alonzo Richardson & Company about five years; during that period of time Alonzo Richardson & Company were engaged in auditing accounts of various firms, individuals and banking institutions, the examination of banks. I was engaged in that business with that firm during that period of time.

The Alonzo Richardson & Company audited the Commercial National Bank of Macon, Georgia, in August, 1914. I had charge of this work for that firm. This is a copy of my report of the investigation of the Commercial National Bank; this is a copy of the examination made as of close of business August 1st. It was sometime between August 3rd and August 21st when that examination was actually made; I do not recall exactly the particular days. It was 1914, the report was turnd in August 21st, 1914, and the work was done between the 3rd and 21st.

The report covers, in a general way, you might say it is a detailed statement of the Commercial National Bank of Macon, Georgia, at the close of business August 1, 1914, showing all assets and liabilities. All of the assets are itemized, by supporting securities, and all the liabilities are itemized by supporting schedules, with the exception of individual deposits, savings deposits and certficates deposits. As to those three items I simply have the totals—the totals verified against the individual ledger. So far as the assets are concerned, I have a detailed inventory of the assets, a list of them, showing the names and amounts of the parties—that is correct. Collaterals. or other securities, are also shown.

551 The information upon which that report is based was gotten from the securities themselves, from the notes, from the stocks and bonds; bonds held by collateral with the Treasurer of the United States, and from other places, verified by the correspondence. The bank balance—things of that sort—was verified from the statements rendered by other correspondent banks; that is, banks that the Commercial National did business with.

The information upon which my figures as to the general condition of the bank, general assets and liabilities, came from the daily statement, supported by the actual securities themselves.

Take the question of liabilities, all of them in a general way—they came from the subsidiary books, such as the individual ledger, the stock ledger; certificates outstanding, and individual deposits from the ledger; statement from the Treasury of the United States and from other banks; re-discount, from other banks,—from other banks and rediscounted; bills payable from banks.

I did examine the books of the Commercial National Bank as of the close of business August 1, 1914, with the exception of the earning expense account; I did not undertake to make a detailed check other than as of the close of business August 1, 1914.

The audit shows the statement of assets and liabilities in detail, with no estimate of shrinkage in assets—as shown by their books on August 1, 1914.

There were no discrepancies noted, nor were there any discrepancies between them and the figures taken from the securities themselves or from the books
552 of the bank and the correspondents themselves; all the books of the bank appeared to be in balance, in accordance with the general ledger controlling the accounts.

Mr. Nat Lewis, mostly, exhibited to me the books, papers and securities of the bank. He was cashier. I had the assistance of all of the officers and employees of the Commercial National Bank—all of them.

Nat Lewis, when he produced these securities of the bank and showed them to me, was in the American National Bank Building; and, also the Commercial National Bank building.

Mr. Souder, the assistant cashier, who had been connected with the Commercial National Bank, assisted me; and I don't remember the names of all those employees; there was quite a few of them. They were at the American National Bank building.

The information that I got was from the books of the Commercial National Bank, assisted by the employees of the Commercial National Bank, and officers of the bank of the Commercial.

That audit also shows the stockholders of the Commercial National Bank. The information with regard to the stockholders and the number of shares of stock held by each was obtained from the stock ledger, and also from the outstanding stock certificates, as shown by the stubs from which they were detached.

Those figures in red ink, opposite a good many items, the letters "pd." and "paid", and other entries there of attorneys, and those entries of that sort, were not made by me.

They were put on the audit after it was completed by us—after I had completed it and turned it in. It consisted of original typewritten figures when I turned it in.

553 That is a correct statement of the assets and liabilities shown by the books of the Commercial National Bank on August 1, 1914, with no estimate for shrinkage of assets.

The cash was verified by actual count as of the close of business on August 7, 1914, and reconciled back to August 1st, the date of this statement.

On August 7th, 1914, there was on hand $1,442.00 in currency; $51.95 in silver, nickles, etc., there was $207.46 in checks of the Commercial National Bank and other banks; and cash items $4,414.69; the total cash as per actual count August 7th, 1914, $6.116.10. In order to

reconcile that bank to August 1st, it would be necessary to add thereto the debits from August 1st to August 7th, inclusive, as per cash book, $785,222.73, and deduct the credits from August 1st to August 7th, 1914, inclusive, as per cash book, $760,670.05,—which will result in the net total of $30,668.78.

Debits of $785,222.73, and credits of $760,670.05; net cash on that date $30,668.78.

The cash at the time I counted it on August 7, 1914, was in custody of Mr. Warren R. Woodward, paying teller of the Commercial National Bank.

My report is made to the president and board of directors of the Commercial National Bank of Macon, Georgia.

This statement is the bill for services rendered for examination of the Commercial National Bank by Alonzo Richardson & Company of Atlanta, Georgia. The Creed Taylor mentioned on that bill is me. I got $75.00, Mr. Nat Lewis, the cashier, paid it to me.

That bill is against the Commercial National Bank of Macon, Georgia; it has been paid. The money came from the Commercial National Bank.

That is a correct list of the stockholders, with
554 the number of shares of stock owned by each.

I see here—August 31st was the date of the bill he asked about. I did not make this statement (indicating statement described below); this is a statement of the Commercial National Bank as of the close of business on June 12th, 1915, made by Alonzo Richardson & Company, of Atlanta, Georgia. It is an examination of the books and records of the Commercial National Bank as of the close of business June 12, 1915, I recognize as coming from the office of Alonzo Richardson & Company. I did not myself participate in that examination, therefore, I know nothing about it.

That one, is a statement, report, on the examination of the books, accounts and assets of the Commercial National Bank of Macon, Georgia, in liquidation, at the close of business August 15, 1916. I made that audit; that was August 15, 1916. The information on which that audit was made was obtained from the books of the Commercial National Bank of Macon, Georgia. Under the head of liabilities, I have the entry due to the American National Bank, Macon, Georgia, $311,412.64, that is the amount due the American National Bank shown by the books of the Commercial National Bank; that is the amount on the books of the Commercial National Bank—the account with the American, shows a credit balance on the Commercial National Bank's books of $311,412.64. I can't tell from this statement whether or not that included interest, I haven't that detail of it on that particular statement; this is a statement of assets and liabilities, showing the shrinkage.

That book shows a summary of profit and loss accounts; it shows loans and discounts—classified as to good, bad and doubtful. Classified bad $446,010.29;
schedule Number one page or sheet number 13;
555 doubtful, in litigation, $97.367.71; total bad and doubtful, $543.378.00: good $21,281.65.

This is simply an estimate, a classification of the papers that I made. That audit contains a statement of overdrafts, classified as to good and bad, a list of stockholders of record, at the close of business August 1, 1914; it shows the stock transfers from January 1, 1914, to August 1, 1914; that is about all it shows.

That is an absolutely correct statement from the books of the Commercial National Bank as of the date it purports to be.

That book is an audit of the accounts of the Commercial National Bank of Macon, Georgia, in liquidation,

covering the period from August 1, 1914, to August 15, 1916, shown in the form of a summary of receipts and disbursements during that period by the American National Bank, liquidating agent. It covers the period from August 1, 1914, to August 15, 1916.

This (indicating) is a summary of receipts and disbursements by the American National Bank of Macon, Georgia, liquidating agent, for the account of the Commercial National Bank of Macon, Georgia, in liquidation. The information on which this audit is based comes from the books of the Commercial National Bank. I made the audit myself. It is a correct summary from the books of the Commercial National Bank; it is practically copied in detail from the books of the Commercial National Bank, and put in condensed form. Receipts mean deposits in the American National Bank by the Commercial National Bank of Macon, Georgia.

Take disbursements—that is checks drawn on the American National Bank by the Commercial National Bank, and paid by the American.

That audit shows in detail the status of the ac-
556 count; that is, as to whether there is anything due to the American National Bank by the Commercial National Bank, it shows a balance due the Commercial National Bank of Macon by the Commercial National Bank of Macon of $311,412.64. That includes interest, interest on the average daily balance, at seven per cent. per annum up to and including June 30, 1916. That interest appears on the Commercial National Bank's books.

Cross Examination.

I say that Mr. Lewis was cashier of the Commercial National Bank at the time that I made this audit—that information was obtained from the minutes of the

directors of the Commercial National Bank, electing officers; from the directors' minutes. I mean he had been elected cashier at some previous time, and that was the basis of my making that statement. I don't remember the date of the minutes that I got that information from. It must have been the first of 1914, as officers of National Banks are elected yearly. All appeared—I guess January.

From the fact that Mr. Nat Lewis was elected cashier of the Commercial National Bank in January, 1914, I use that as the basis of my statement that at the time I made this audit, he was cashier of the Commercial National Bank and was so acting. That is all the basis I have for it.

Mr. Lewis at this time was personally located—his place of business—at the American National Bank building.

I went to the American National Bank during the progress of my investigation several times; I am not familiar with these streets here—the American National Bank's place of business—it is across the street from the Dempsey Hotel; that is all I can give you. The Commercial National Bank's former place of business was on a little triangular block, about two and
557 a half blocks away. I found there a great many records of the Commercial National Bank; and found a good deal of the collateral securing notes of the Commercial. I found it in the vault there. Mr. Lewis was there in charge of it. There was no one up there at the building. He was in charge, he was up there with me; he went up there with me.

A good part of the collateral that I examined was up there. I couldn't say exactly what part of it. I don't know what proportion of it was up there. I could not define the particular collateral at the Commercial

Building, or what was brought down to the American National.

There wasn't any bank being conducted up there.

There were no persons going in and coming out there for the purpose of transacting any business, that I know of. I didn't see any.

In making this audit from August 3, to August 21, between these dates, it occupied practically nine days.

This bill against the president and directors of the Commercial National Bank was rendered to the Commercial National Bank.

I don't think that I said something about that bill before, being made at the instance of, or rendered to the president and directors. Alonzo Richardson & Company gave me instructions to make this audit. I acted under their instructions. I received no other instructions. Absolutely, so far as either one of the banks was concerned, I didn't know anything about that, except that Alonzo Richardson & Company told me to come down here and make this audit.

I talked with the officers of the American National Bank—Mr. Taylor, Mr. Hillyer and Mr. Scott—with all of them.

This collateral that I examined around there in making this first audit was in the note pouch
558 of the Commercial National Bank, and also, as I stated, some of the collateral was in the vaults of the Commercial National Bank, on this little triangular block.

I did not go over it with Mr. Taylor and Mr. Hillyer, or Mr. Scott. I did not attempt to classify any of the papers at that time.

I did not confer with Mr. Taylor, or Mr. Hillyer, or Mr. Scott in connection with this audit.

I couldn't tell you to save my life where that audit has been, the typewritten result of it. I do not remember having seen it from that day to this; I have seen a copy of it.

I don't know that I ever went over the audit with Mr. Park or Mr. Jones. No, sir, I have not. Yesterday morning was the first time I had seen it since I turned it in. I did not go over the copy with Mr. Jones or Mr. Park in detail. I do not know where the original has been. It was sent out by some one else.

That audit purports to show the general accounts taken from the general ledger, and I compared the general ledger with--the general ledger items—with the subsidiary books,—with the results shown by the subsidiary books; and also with other banks and bankers who have accounts with that bank.

I don't remember finding any indication of any loan made by the Commercial National Bank after August 1, 1914—let me look at my report. I did not find where
the Commercial National Bank made any new
559 loans after August 1, 1914.

National banks doing an active banking business make loans every day. A National Bank with three hundred thousand dollars capital; that is, if such a bank were in the regular banking business, would make loans every day; and I found no such loans—no new loans.

I checked absolutely each one of the subsidiary books as of August 1, 1914; checked them throughout to see if they were accurate. I found a complete reconciliation in every respect. I may have found some little errors, minor errors, that did not amount to anything.

According to my recollection, the only difference that existed at all in the books were a few differences in reconciling the accounts with other banks by the Com-

mercial National, which represented probably exchange, exchange charged or credited on the average daily balances; these entries were corrected during the course of our work; they were small amounts.

During the course of my investigations I dealt with men whom I say were employees of the Commercial National Bank, because they were on the pay rolls of the Commercial National Bank, and they were bonded by bonds held by the Commercial National Bank.

The affairs of the Commercial National Bank were being administered by the American National Bank under a plan or agreement whereby after the administration of the affairs of the Commercial National Bank any over-plus arising from that administration,—that is, assets over liabilities—was to be due and payable to the stockholders of the Commercial National Bank, it would have been necessary under these circumstances to keep this administration substantially as it was
560 kept, in order to tell whether or not there would be an over-plus, and if so, how much. They would absolutely have to keep that administration substantially as I saw those records kept.

In many instances a National Bank, or a State Bank, engaged in the regular functions of a banking business, would make deposits in another bank in the same town or city; make deposits of its moneys in another bank in the same city or town.

It is not the practice among banks, in the regular course of banking business to take the deposits that came into that bank, and take collections of notes handled by them for other banking institutions, and put these moneys in another bank. A deposit would be made by the Commercial National Bank with the American National Bank, in the regular course of banking business, to carry an account with each other; you will find here in

the city of Macon all the banks carry accounts with each other; and at certain seasons of the year if a bank has a little more money than they want, they pay each other interest on it. If a bank has a little more money than it wants, it is deposited in another bank, and they pay interest.

At the time I examined the affairs of the Commercial National Bank I did not find that it had a little more money than a bank with three hundred thousand dollars capital would want ordinarily. In the period from August 1, to August 7, the cash items of all sorts dropped from $30,668.78 to $6,116.10. That did not indicate a bank doing a banking business—a national bank, with a capital of three hundred thousand dollars, doing a regular banking business. I think it would indicate that they were not engaged in the usual and ordinary business of banking.

If the affairs of this Commercial National Bank were being administered by the American National Bank at its place of business, under an agreement whereby at the end of the administration the over-plus, if any,
561 should be delivered over to the shareholders of the Commercial National Bank, the expenses of that administration to be taken out before there was any over-plus, it would be necessary to keep the payroll and other expenses of the administration, for the clerical workers in the administration, as a charge against the bank being liquidated, and, against the bank whose affairs were being liquidated under that sort of an agreement.

This second audit I recognize as having been made by Alonzo Richardson & Company, because I recognize Mr. Richardson's signature—I go by his signature.

I know he did not make it. I could not swear who put it there; but being there, connected with that office,

I know how it happened to be there—I just know it was there, like anything else connected with business in that office. But, just to get right down to brass tacks, I couldn't swear who made it.

Q. Now, you spoke of this $75.00 coming from the Commercial National Bank. If the American National Bank agreed to administer the affairs of the Commercial National Bank, assuming the liabilities and taking over the assets, and agreeing not only to pay the liabilities that existed at the time of the trade, but any expenses of administration, charging the expenses of the administration against the assets administered, and agreeing to pay over the overplus to the shareholders of the Commercial National Bank, this item of audit would naturally be charged against the Commercial National Bank, in that sort of an agrement, wouldn't it?

A. Yes, sir, under such an agreement for the administration of its affairs. In other words, this charge would have been made that way, if the American National Bank had taken over the assets of the Commercial National Bank agreeing to pay, if the American had bought the assets of the Commercial National Bank,
562 agreeing to pay all outstanding liabilities of the Commercial National Bank and the expense of administering those assets, with the further agreement to pay over the over-plus to the shareholders of the Commercial National Bank, after paying all liabilities of the Commercial National Bank and the expenses of administration, this item would have been kept just like it was. It would have been kept separately.

When I speak of an amount of money due by the Commercial National Bank to the American National Bank, I mean the balance shown by the books of the American National Bank, which of course is verified by—I mean to state that the disbursements made by the American

National Bank exceed the amount received by that amount,—which leaves a net balance due the American National Bank of $311,412.64, by the Commercial National Bank.

The books of the Commercial National Bank showed that the American had paid out that much more than they received from the Commercial National Bank's assets.

Mr. Karsten, I believe, was keeping those books at the time that I made this third audit. He is a son-in-law of doctor—I don't know whether he was Mr. Joel Hurt's representative—I don't know Mr. Joel Hurt. I do not know whether he was an employee of the Commercial National Bank.

They were the original books that I had audited two years before that, and were continued down at the American. This record of the administration of the assets of the Commercial National Bank was continued in these same books.

I simply saw the result of the handling of these assets, how it was indicated on the books; so far as what was actually done in the administration of the affairs of the Commercial National Bank, I don't know anything about that; I don't know whether they were properly handled or not. I don't know anything at all about that.

563 It would have been necessary to keep some plan of accounting in order to determine what was the overplus . I don't know whether this plan was about as convenient as any, I don't know about that.

I do not know whether Mr. Nat Lewis had any connection with the American National Bank during the time that I made this audit or not.

The bank went into liquidation on August 3, 1914. The books clearly indicated that.

In connection with this last audit I made, I referred to an exhibit there of profit and loss, that was merely a condensed statement taken from the records that I found around there at the American National Bank; it was a summary of profit and loss accounts shown by the books of the Commercial National Bank; at the building of the American National Bank.

I couldn't state as to whether the loss was actually sustained, or how it was sustained, or anything about the handling of these assets. I do not say as to that.

Re-Direct Examination.

These books of account which I audited would indicate that the books were kept with a view to the fact that the American Nat. Bank had advanced money to the Commercial National Bank with the expectation of being repaid. In the case of a sale by one bank of its assets to another bank it would not be usual to keep the account in the way in which the accounts of the Commercial National Bank were kept,—in the usual sale of one bank to another it would be customary for all of the accounts of the selling bank to be transferred to the purchasing bank. The assets and the accounts of the Commercial National Bank were not so transferred to the books of the American National Bank.

564 It would be absolutely necessary, in the event there was to be an accounting with the stockholders, for some record of receipts and disbursements, and items of that kind to be kept.

The method employed by the American National Bank, in keeping up the books of the Commercial National Bank is not customary; they would have to maintain

records of all transactions, and report quarterly to the Comptroller of the Currency all transactions of the liquidating bank, and for that reason they would have to keep a record, but ordinarily it would not be as voluminous as they have in this case.

It would not be customary in a case of that character for the officers of the selling bank to have charge of its books and its records, to make collections, and receive deposits, check out balances and make clearings, and conduct a banking business to that extent. All the business is transferred to the books of the purchasing bank, and the officers of the selling bank have no further duties, unless they are assigned to some duties by the purchasing bank.

In some instances the selling bank assists in the collection of the assets sold, but so far as their authority is concerned, they have no authority after the sale is completed.

It is usual in cases of sale to transfer the assets to the purchasing bank. It is not customary or usual for the books of the selling bank to be kept after the transfer; only, to be kept for a permanent record. Ordinarily there would not be new entries made in those books. The old books would have to be kept just for a permanent record—the books themselves.

In the case of a sale the purchasing bank would keep
the expenses, and, in the event they had to ac-
565 count for the overplus, it would be necessary
for them to keep a separate expense account from their own expense account. Ordinarily, these expenses would be paid by the purchasing bank, by its own check, but charged to the expense account of the selling bank.

It is not customary for collections made on paper of the selling bank to be deposited to the credit of the

selling bank; the securities are transferred to the purchasing bank, and all credits made direct by the purchasing bank itself—that is the usual method.

It is not customary for checks to be drawn by the selling bank on the purchasing bank where there is an absolute sale by one bank to another, although there may be a liability to account for the overplus.

Re-Cross Examination.

I have been testifying about what is customary in a case where one bank sells to another bank its assets, under an agreement whereby the purchasing bank assumes all of the liabilities of the selling bank and administers the assets of the selling bank, with a view of returning to the shareholders of the selling bank all the over-plus that may arise from the administration, by reason of the fact, that I have been connected with institutions that bought and sold each other. I have known of several instances of that sort or arrangement that you have stated, where there is an agreement to pay over the over-plus, but I do not recall any just now,—but I have been connected with several. I have been trying to talk about a custom under these circumstances. I testified that that sort of thing has been done, but I can not recall any instance where it was done. It is not an unusual thing; it is not an unheard of thing. No, I don't think it is a strange sort of an agreement to make.

566 It does not frequently happen where the buying bank gets from the selling bank a large volume of business, I say where the buying bank gets a large part of the commercial business of the selling bank, this sort of a trade is not unheard of.

Based on such an agreement outlined, with a view of paying over the over-plus from the administration of the bank's assets to the shareholders of the selling bank; that system that I found there was substantially like an account would be kept.

But what I found down there was not substantially what an accountant would put in as a plan of keeping the records of an administration, looking towards paying the over-plus to the shareholders of the selling bank.

I don't know who is going to pay my expenses. Mr. Park got me to come down here. He hasn't agreed to pay me anything. I haven't got the letter he wrote me. I couldn't tell you to save my life whether the American National Bank is the person who got me to come down here, and whether they are paying me for coming here. I don't know what I am going to charge them; I am not in the auditing business. I am going to charge them my expenses, and—whatever I can get—for coming down here to testify. Absolutely going to charge them just as much as I can get—all the traffic will bear. I came down here to testify for them—accommodation. I came for accommodation, and for as much as I can get. I hated mighty bad to come.

It is the custom where one bank sells out to another, the buying bank takes the assets and assumes
567 the liabilities, and it would put in its own force. That is where it buys it without any obligation over—with no string tied to it. I answered in response to your question, outlining the agreement whereby the American National Bank bought the assets of the Commercial National Bank, agreeing to pay the liabilities of the Commercial National Bank and administer the affairs of the Commercial National, and to turn over to the shareholders of the Commercial any

over-plus arising from that administration—that the system they employed of keeping accounts that I found there would be proper and right as should be kept under that kind of an arrangement; and such as it would be reasonable to expect, if that was the arrangement.

The volume of business that was being done by the Commercial National Bank on August 1, 1914, if added to the business of the American National Bank, or any other bank of that size, would require additional clerical help.

Depositors in banks are rather timid in dealings with new people; they prefer to deal with the people they have been dealing with—they usually prefer to deal with some one that they know, some one they have been dealing with.

It would not be an unnatural thing to take the officers of the Commercial National Bank down there to receive deposits from its former customers. And it would not be unnatural to take and to use the collector of the Commercial National Bank for the collection of bills payable to the Commercial National Bank.

It would be perfectly natural, in the interest of time, before the accounts could be passed into the American National Bank, to use them for the purpose of paying checks and receiving deposits, even if those assets had been sold to the American National Bank, with a view of paying out this overplus to use the Commer-
568 cial National Bank employees, who had been and who were familiar with the books.

A bank doing a usual and ordinary course of business, with three hundred thousand dollars capital, makes new loans every day, and issues certificates of deposit every day, and receives deposits from other banks every day; and it would actually go to the Clearing House every day; it would do all of these things every day.

In the course of the business of a national bank, with a capital of three hundred thousand dollars, and doing the volume of business indicated by the records of the Commercial National Bank, on August 1, 1914, it is true that there would naturally be outstanding a great many items coming from other banks, and items having gone out on and just before August 1st to considerable distances, which would have to be carried on those same records for a period of several days in order for them to be put in shape; and, granting that after August 1, 1914, this bank went out of the active banking business, there would be items that had gone out, as they do from a bank of that size, to the different parts of this state and other states, and items in transit from other points in this state and outside this state, to this bank as of August 1, 1914; it would take several days to get these various items cleared, and make entries on the books, even if the bank had actually retired from the active banking business August 1, 1914.

If these various accounts of deposits and amounts paid on deposits and accounts, either active commercial accounts, as well as time accounts, had been thrown into the American National Bank, and commingled with its accounts, and if the assets had been taken in there,

569 and commingled with its assets, that is, with the assets of the American National Bank, as an ordinary purchase, it would be impossible to tell what the overplus was at any given time.

Yes, I know who E. C. S. is: this is Mr. E. C. Scott. It looks like his signature (examining paper), his O. K. He is cashier of the Citizens and Southern Bank of Macon. He was at that time cashier of the American National Bank.

Mr. Scott did not have anything to do with the Commercial National Bank that I know of.

This bill is made to the Commercial National Bank; and at that time Mr. Scott was cashier of the American National Bank.

It would indicate that that expense item was paid by the American National Bank for the account of the Commercial National Bank. The check is a cashier's check, drawn on the Commercial National Bank, and shows that it was being handled through the American National Bank.

I would not say that a bank that was a going concern, and transacting its own business, would handle an expense item in that way; nor, any other similar expense item, unless it was allied with some other institution—I said, unless it was connected with some other institution.

If the American National Bank and the Commercial National Bank were consolidated, by the purchase of the assets of the Commercial National Bank by the American National, under the agreement to pay the overplus, after the expense of the administration of the assets of the Commercial National, to the shareholders of the Commercial National, and under an advertisement by the American National Bank as follows: "To the depositors and customers of the Commercial National Bank, Macon, Georgia,—In order to better serve the business interests and people of this community and section, we
570 are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National Bank has been effected, The assets of the Commercial National have been taken over, and we will take care of all the business formerly handled by the Commercial National. Our facilities for handling this extra large volume of business are the very best, and with the addition of these deposits the pre-eminence of the American National Bank as the

largest bank in central Georgia has been increased. The money on deposit with the Commercial National has been transferred to us, and we stand ready to pay your checks against same, and to handle any other of your banking business which may be desired. Checks should be written on the blanks of the Commercial National as heretofore until you give directions for the transfer of the deposit or make other arrangements. We invite you to come in and see us, and if we can be of service to you it will give us great pleasure to know it. The American National Bank, Macon's Million Dollar Bank"; —after that announcement it is not unusual that these checks should be continued to be drawn on the Commercial National Bank after the consolidation on August 1st.

Re-Direct Examination.

It is customary contract, by which one bank agrees to give its services, charging nothing therefor, and account for an overplus of assets to the selling bank, and have no protection itself for the sums paid out; I have seen that done in one instance, and I have seen them receive no compensation from the selling bank for taking it over and make something out of it.

I did not say that I had seen one case in which one bank undertook to liquidate another bank, and account for the overplus, and charge nothing for its services.

571 I have not seen any bank liquidate another bank without compensation.

I have never seen a case exactly where a bank, in a consolidation or a sale, undertook to assume all the liabilities of the selling bank, and had no protection for the liabilites whch it assumed, but undertook to account for any overplus; the usual sale is always on an agreed price ahead of time. on whatever they pay

for the stock, and if they make anything over and above that agreed price, that belongs to the purchasing bank. That is the usual contract in the case of consolidation.

That was a purchase I was talking about—agreeing on a price; but there are different kinds of consolidation; sometimes you increase the capital stock to that of both banks; then again, you wipe out the capital stock of one bank, and carry on the business on the capital stock of the purchasing bank as it was before the purchase, and pay the stockholders of the bank which is consolidating with the other bank.

I have never known of any contract such as the one you asked me about; not where it was liquidating the other bank; I understood you to mean a sale.

I have never known of a sale where a bank assumes the liabilities of another bank, and charges nothing for its services, and agrees to account for any difference, overplus, without any other guaranty. The system as kept by the Commercial Nat'l Bank after this transfer to keep up with the expense is a usual and customary system only where a bank or a person is winding up the affairs, or liquidating the affairs of another bank, but where one bank has sold to another bank, it is only necessary to keep just one account on the general books of the purchasing bank.

Re-Cross Examination:

572 It is natural if a bank does buy their assets, though, of a retiring bank, agreeing to assume its liabilities and to pay over the overplus to the shareholders of the selling bank after deducting the costs of the administration or liquidation, without taking to itself any compensation for its own services, it is perfectly natural for that bank, so purchasing under

that agreement, to perform as little of the burden of liquidation as possible, and to take as many clerks who are familiar with the affairs of the old bank as possible, and charge their compensation up as expense.

It is the thing to be expected ordinarily if a purchasing bank is to be burdened with the obligation to account for any overplus, but with the right to charge up the expense of administration, that they would take all the necessary forces who are familiar with the affairs of the retiring bank for the purpose of administering its assets, and charge their services up as expenses of administration.

It would be worth a great deal to the prestige of a bank that took great pride in being the largest banking institution in Central Georgia to make a trade by which it gained individual deposits of more than two hundred and seventy thousand dollars; it would be worth something to them. And bank deposits of one hundred and sixty nine thousand dollars,, and savings deposits of seventy five thousand dollars, and accounts of depositors on certificates, amounting to seventy three thousand dollars, it would be worth something.

It is true that in any trade that a bank makes, whether by purchase or otherwise, the bank's officials measure their own judgment and experience, and take the chance of gain against the possibility of loss; that is true in every transaction of a bank that
573 the officials use their best judgment in making the trade.

Where the officials of a purchasing bank have the opportunity to examine separately every note receivable, with the collateral, being familiar with the borrowers, the makers of the notes the men who have hypothecated the collateral, and formed their individual opinions as to the worth of those notes and collateral, using their

.pe experience and familiarity with the people, it is ot unusual that they should make a definite trade on the basis of their judgment as to how much that collateral and notes receivable is worth; they could put a valuation on what the notes, the assets, were worth.

It is not at all unusual to make a definite trade using their judgment as to what they were worth; and make a definite trade of one kind or another, that is done every day in the banking business.

I know Mr. R. J. Taylor—who he was. I know Mr. L. P. Hillyer, and Mr. E. C. Scott. They were all officials of the American National Bank.

If they had the opportunity to the fullest extent to examine the assets of the Commercial National Bank, with their wide knowledge of what the collaterals were worth, and what the personal credits of the makers of the notes was, it would not be an unusual thing for them to make definite trade on behalf of the American National Bank, based on their inspection of the notes and collaterals and their knowledge of the personal responsibility of the makers of the notes and the value of the collateral. And after they had had the opportunity, these three men of wide banking experience, to determine the sufficiency in amount and value of the assets of the Commercial National Bank, it would not be unusual for them to make a definite trade of one kind
574 or another, without saying what kind of a trade, based on their estimate. That is what they are in the banking business for, to use their experience, judgment and observation in their business.

The Citizens and Southern Bank of Savannah occupies the same quarters as did the American National Bank. Mr. Mills Lane is President of that bank.

I do not know what kind of a trade Mr. Lane made with the American Bank.

If it is true that Mr. Lane, and others acting for the Citizens and Southern Bank, or acting for themselves, after inspecting the assets of the American National Bank, measuring it and valuing it, agreed to give a flat price of one hundred and fifty dollars a share for the stock and liquidate the bank, and pay to the shareholders all over one hundred and fifty dollars a share that was realized from the liquidation—that sort of an arrangement would be substantially different from the one that has been recited to me here, that is a little different. I do not think the same element of risk would be involved in it; I think that is entirely different.

The volume of business of a large bank is of very great value to another bank that desires to increase the volume of its business in its prominence as the largest bank in this section.

E. C. SCOTT, witness for the plaintiff, testified:

Direct Examination:

I am cashier of the American National Bank at the present time; I was cashier in 1914. The books of the American National Bank during the year 1914 were kept under my direction, and under the direction of Mr. Taylor, who was at that time president of the American National Bank. I had charge of the details of the books. Mr. R. J. Taylor was president of the bank. The other executive officers of the bank were
575 Mr. L. P. Hillyer, active vice-president, and Mr. W. E. Bozeman, assistant cashier; these were the active officers who had charge of the internal affairs of the bank.

I was familiar with the transaction between the American National Bank and the Commercial National Bank.

When the books were brought down the first of August, I think,—the first Monday, at any rate,—after that the account with the Commercial National was kept just like any other bank account was kept, on what is called our bank ledger, and it was run the same as any other bank account, by debiting charges against the Commercial National Bank, and crediting them with their deposits.

The depositors would issue checks against their accounts with the Commercial National Bank,—would draw checks on the Commercial National,—and the smaller checks, the majority of them, were paid at the special window provided for the teller of the Commercial National Bank; and if for any reason it was not convenient for him to pay them, if they were for a larger amount, he would refer them to the paying teller of the American National Bank. If the check was to be deposited he would,—the teller of the Commercial National would 'O. K.' the check, and it was accepted for deposit by the teller of the American National Bank. If the deposit was transferred, as an account, it was in that way—

The accounts of the Commercial National Bank were transferred to the American National Bank only by checks. The depositors made the transfer.

There were certain windows,—two or three,
576 I don't remember now the exact number,—but they were assigned to the employees of the Commercial National Bank, and the depositors of the Commercial National would go to those windows or to those tellers to see about their balance, tranferring them, or withdrawing them, as they might wish.

Those accounts were not transferred to the books of the American National Bank when the books of the Commercial National were carried down to the American National.

For a few days,—a week or ten days or such a matter, —the Commercial National Bank carried their own cash, and it wasn't turned over,—a cash settlement was not had with the American National Bank for sometime after they came down there.

For a few days Mr. Mallary, the president, was at the Commercial National Bank and Mr. Cobb and Mr. Nat Lewis; Mr. Nat Lewis probably spent more time there than any of the other officers.

Mr. Souder was there after they came. I think for a period of about thirty days. Mr. Mallary, the president, came down too, but he did not stay down there only for just a few days; he was in and out for quite a while.

The American National Bank did not pay them; they were paid by the Commercial National. The American National did not employ them.

For the Commercial National Bank to get the cash with which to pay its checks or the checks drawn on it the paying teller of the American National Bank would turn over to the paying teller of the Commercial National Bank a certain portion of cash,—about what they thought they would require for a days work,—and at the end of the day the two tellers would have a settlement.

For the checks that were drawn against the American's account, the American National would settle by check of the Commercial National on the American National.

That check would be charged against the account
577 of the Commercial National Bank.

A depositor transferring his balance from the Commercial National to the American National Bank, would go to the teller of the Commercial National and ascertain his balance, and then he would draw a check against the Commercial National for the amount of his balance. If he wished to withdraw the amount of his balance in cash it would be paid to him, and if he wished to deposit it in the American, the check, after being 'O. K.'d.' by the teller of the Commercial National was taken to the teller of the American National and deposited.

At the close of the days business the checks that the American had taken and deposited for the accounts of customers, were settled by the check of the Commercial National; that check was charged up to the account of the Commercial National Bank.

I spoke about the account between the two banks, how that account would be kept, those checks that I spoke about a while ago were the ones that would be charged against that account.

The officers and employees of the Commercial National Bank continued to discharge their duties as such officers for a period, I think, of about ninety days, —sixty or ninety days.

I think Mr. John M. DeBorde staid on there with the Commercial National Bank during 1915; his services there went over into the next year.

Mr. Lewis acted in the capacity of cashier,—I could not say exactly the length of time, but for quite a while, as most all the checks.

A very small portion of the balances of depositors of the Commercial National Bank were transferred at times to the American National Bank—I think a very small portion of them were transferred during November or December—what we term inactive balances. They

consisted of mostly small unclaimed balances, that were possibly not changed for quite awhile.

578 At the time of that transfer a list of those accounts were made up, showing the total, and the Commercial National gave the American National a check for the amount of those balances. That check was charged to the Commercial National.

The Commercial Bank building was conveyed by deed, executed by the officers of the Commercial National Bank and the American National Bank. It is my understanding that up to the time of the transfer up to the time of the execution of this deed, the Commercial National Bank building was rented. The rents were credited to the Commercial National. The Commercial National Bank paid the expenses of the building.

The majority of the collections of the notes in favor of the Commercial National Bank were made by the Commercial National or by one of their men that had charge of this—I think Mr. DeBorde, Mr. John M. DeBorde.

These contracts of people with the Commercial National were handled by people in the employ of the Commercial National; these people were never in the employ of the American National Bank.

When a note in favor of the Commercial National Bank was collected it was credited to the account of the Commercial National, then the Commercial National would make deposits with the American National Bank. These collections were deposited by the Comercial National with the American National. It went to the credit on what was termed the bank ledger, on which all bank accounts were kept. The individual was not given credit at all for this amount by the American National Bank; it

was given credit to the Commercial National Bank from its deposit.

As to items on the Commercial National Bank handled through the Clearing House, for a few days they were handled just as items on any other bank were
579 handled, cleared in the regular way; they cleared their own checks on other banks, and the other banks would make separate settlement with the Commercial National Bank for checks they had against them.

The balances due the American National Bank by its correspondents were closed out by a draft drawn by the Commercial National Bank; their balances to them were ascertained, and those checks were deposited to the credit of the Commercial National Bank with the American National.

The account of the Commercial National Bank was kept on our bank ledger. We have one ledger in which the accounts with all banks are kept; nothing is kept in that ledger except the bank accounts, just as we have separate ledgers for the individual accounts. Those ledgers are loose-leaf books.

If we rendered a statement we kept a duplicate; if the account was rendered to us we did not keep a duplicate.

We rendered a statement to a country bank that kept an account with us. We rendered the Commercial National Bank statements.

These sheets that you show me are the duplicate sheets of the account of the Commercial National Bank with the American National Bank, covering the period from August 1, 1914, to December 7, 1916; those are carbon copies, the originals were turned over to the Commercial National Bank. As I recall, they were delivered to Mr. DeBorde during the time he was there. I think most all of the statements rendered and the original

of the accounts were turned over monthly. They represent separate months, not each sheet, sometimes one month takes several sheets. After the account became more inactive they represent one month. These sheets that I have in my hand came from our bank, the ledger or transfer binder of the bank ledger. At the
580 end of each month all of the accounts are transferred to new sheets, and a new account opened each month with every bank; and the old sheets are transferred to the ledger binder. All of these sheets came out of that binder. I was not present when the originals of these sheets were exhibited to Mr. Souder and introduced.

The first charge is on August 3rd, 'D, 402', that signifies the draft number, 402, $10,315.90. That is drafts drawn by check of the Commercial National on one of their forms on the American, and paid by the American. That entry is the charge against the Commercial National Bank on that particular draft. Those drafts were drawn on the American. There is one item, August 12th, recording deed 70 cents; every item marked "D" signifies a draft. Here is one, wire to New York, 60 cents; and another one, transfer, 75 cents. In the main, they are drafts that constitute the bulk of the charges. On the credit side, the first item on it is August 1st, a deposit of twenty five thousand dollars, which represents the proceeds of a note that was executed by the Commercial National Bank, I mean deposited by the Commercial National.

The next item is the 3rd; there were three deposits on that day, one of $1,373.50, another for $10,415.00, one for $4,500 and $3.90; those were deposits that represent collections of various accounts for the account of the Commercial National Bank, deposited by the Commercial National with the American National. The deposit was

made out as a deposit ticket for any other account would be made out, on its deposit ticket. They were made out on a regular deposit ticket. That is a printed form of ticket, or deposit slip of the American National Bank. The tickets were made out on the deposit tickets of the American National Bank, to be deposited to
581 the credit of the Commercial National.

Those deposit tickets were all filed with our —what we call credit letters of the bank, or bank letters —and those are usually kept, say, for a period of twelve months, or such a matter, and when quite a number of them accumulate—we very seldom have to refer back to them—and those tickets, or credit letters, were among a bunch that we destroyed sometime ago.

I have made a search for those particular tickets, and have been unable to find them. I know, as a matter of fact, that they were destroyed.

We did not keep any other account with the Commercial National Bank. There wasn't any difference in the keeping of this account with the Commercial National and the keeping of the account of any other bank.

The total balance of that account is shown on the general ledger, under amount due from banks. This is the general ledger. This book covers the period from or beginning March 27, 1915. On this general ledger the account of the Commercial National Bank is included on line 21, due from banks,—that is the item, due from banks, on line 21. This ledger shows every day's business, this ledger represents the totals only, the totals of every account.

There was a change made in the way of keeping that account after the American National Bank was changed to the Citizens and Southern Bank, and after that day it was carried on here as a separate item; for instance, on December 7, 1916, the day the name was changed

to the Citizens and Southern, and from that date the indebtedness of the Commercial National Bank is shown —the book shows on line 14 the Commercial National Bank $205,205.95. That was separated from due from banks on December 7, 1916. It was carried since that date just in that way,—the Commercial National Bank,—in the assets of the American National Bank, on the books of the American National Bank. That was December 7, 1916, at the close of business that date.

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This book shows the last entry, last date, March 28th.

I spoke of the American National Bank changing its name—I did not mean that technically,—I meant when the Citizens and Southern took over the affairs of the American National.

The American National is in liquidation now; the other ledger is at the bank. I will get it before we get through.

That is the current general ledger as to the amount of this account. It shows on here at the close of business, March 28th, at the close of business $302,581.70, Friday, March 28, 1919.

That includes interest up to 1917, I think,—I don't remember the exact date, it will show; figured on daily balances at the rate of seven per cent.

I am familiar with the Commercial National Bank ledger. I have compared the amount on the two ledgers, and it is the same. It is shown in that book what uncollected assets of the Commercial National Bank remain on hand; I have a memorandum of it in this book; this book I have is an audit as of December 1, 1916, an audit of the Commercial National Bank made by J. C. Dunlap, Certified Public Accountant, with an office in Atlanta. He had been a national bank

examiner; he had examined the American National and the Commercial National banks since this contract between the American National and the Commercial only as a certified public accountant. I could not say positively whether he had visited the American National as a national bank examiner at that time, but I think he did.

This audit shows the list of uncollected items of the Commercial National as of December 1, 1916; I have checked them with the audit. I have entered
583 on that audit changes in that amount since that time. I have not made memorandums of some few settlements or collections; there are a few of them that have been made that are not entered. The items shown on there as uncollected are still outstanding and uncollected, except, as I said, a very few; some few settlements were made of items that appeared as assets at the time of this audit,—they are either paid or settled in full.

There are no other assets of the Commercial National Bank that I know of, except those shown on that audit. I am familiar with those assets. I made up a list of those that I regard—only one—as being any prospects of being collectible . I regard this list as possibilities; the amount of the possible list which I have in my hand is $20,671.40.

The first item off that list is J. W. Hanson, $315.94. I would consider that doubtful paper. We have not made any effort right recently to collect it; efforts have been made to collect it without any success.

The next item is J. H. Hall, $1,269.84. I would consider that collectible paper; there are two notes, one due the latter part of this year, and one the latter part of next year, that, when paid, will be applied to the liquidation of this balance. The balance of the claim

against Jesse H. Hall I consider worthless, under present conditions. It is in judgment. I couldn't say how long it has been in judgment—I know it has been from several years. I do not know whether there are any assets of Mr. Hall that are subject to levy and sale.

The next one is Mrs. M. E. Horne, $48.85; that was originally $75.00, but there have been some collections made on it, and I think there is a possibility of collecting the balance. There were two payments made;
one payment of $8.15 July 12, 1917, and an-
584 other payment of $18.00 on January 27, 1918.
There is, I think, a possibility that the rest of it may be collected.

The next is Lewis Leonard & Company, $3,086.45. That represents an indebtedness against that firm; for sometime they have been out of business, and the only possibility of collecting on that is through some insurance on some of the partners. That represents the estimated amount that possibly may be collected out of insurance policies. It is insurance—I think—I forget who those policies are on now; it seems to me like they are policies that have been assigned to Lewis Leonard and Company to protect claims due them; it has been sometime since I have seen the policies, and I do not recall off-hand the details. There is one of the insured's who died sometime ago, and there are being some claims set up now on account of the policy; this is simply an estimated amount. The amount of the Lewis Leonard Company's debt is $6,086.45. Both Lewis and Leonard are dead, and have been dead for some years.

The next one is Mrs. J. C. Tindall, $24.24. In discussing that with Mr. Souder I thought there might be a possibility of collecting that, and we left that among the assets, possibly collectible. I know of no way my-

self to get it. I know of no property Mrs. Tindall has; the claim has not been paid for five years.

Next is Guy Armstrong: $1,590.00. That is in litigation; the case is now in the Supreme Court.

The next one is A. B. Domingoes: $487.60. I know nothing about that further than in discussing it with Mr. Souder we thought possibly might collect it. I think Mr. Domingoes still lives in Macon; I don't know him personally.

The next is Leesburg Naval Stores: $1,500.00;
585 that is in litigation, too.

The next is M. M. Newberry: $800.00. M. M. Newberry if I am not mistaken has gone through bankruptcy. I am sure he has, as a matter of fact; but there are some papers attached to his note, collateral, that there is a possibility of realizing something on. I do not think there is any chance at all of collecting anything against the maker, he is in bankruptcy.

The next is Parish and Parker: $840.43. In discussing the matter with Mr. Souder, I understood that there might be some more collectible on account of that claim. The claim was $3,524.43. There was $684.00 collected on September 24, 1917. Neither Parish nor Parker live here. Mr. Parker, my information is, is in Baltimore; where Mr. Parish is I don't know.

The next is A. L. Patterson: $10,000.00. That is in litigation. Mr. Patterson lives in New Orleans.

The next is Charles Roye: $21.05. The original claim was for $40.00, and there have been some collections made. Mr. Souder in discussing the matter said there might be a possibility of collecting some more. I don't know the party.

The next one is L. S. Shepperd: $100.00. I was only leaving it there at the suggestion of Mr. Souder, he thought we might get a little something out of it.

The next is T. J. Simmons: $175.00. That was originally $200.00; there was $25.00 paid on it, leaving a balance of $175.00, and we thought in discussing it there might be something more collected.

The next one J. C. Wheeler: $400.00. There have been a number of collections made on that since this audit was made. At the time of the audit the indebtedness was $1,114.58. There are a few other items, I understand, held as collateral that there might
586 be something realized on.

The next is W. E. Martin: a balance of $12.00. The original claim was $60.00; there have been several credits on it. One collection was made the first part of this year, in January, and we thought possibly the balance might be collected.

That is all of them, and that list totals $20,671.40.

The only thing outside of that list that I regard as collectible, we have some stocks that something might be realized on, a few, I can't say off-hand what the stocks are. We had 22 shares of Georgia Kaolin stock. There is not much market for it. It is estimated eleven hundred dollars, at fifty cents on the dollar; I think the stock would be good for that amount, and there is a possibility of its bringing more. Since that time we have acquired a few shares more of that Georgia Kaolin stock; and in addition to that we have some stock of the Pine Tree Paper Company, 45 shares, I think. There are no other stocks besides those that I think are any account. I will make up a list of those stocks, with my estimate as to the value of them, just as these other accounts. Most of the other accounts of the Commercial National Bank have been placed in the hands of attorneys for collection. A good many of the parties have gone into bankruptcy, and others, the attorneys have reported, they considered worthless, and my

estimate is based on reports made to me by the attorneys.

W. E. BOZEMAN, witness for the plaintiff, testified:

Direct Examination.

I am the assistant cashier of the American National Bank; I was such an officer in 1914, and continue to hold that position up to the present time.

587 I made up this list that you hand me. It is just a statement showing receipts and disbursements of the Commercial National Bank on the books of the American National Bank from December 7, 1916, on through up to date.

I had a copy of the audit of Alonzo Richardson & Company made by Mr. Creed Taylor in August, 1916, I think; this shows the items—everything—since that time.

E. C. SCOTT, recalled by the Plaintiff, testified:

Direct Examination.

These are letters from the Comptroller's office, and copies of our replies, taken from the vaults of the American National Bank. We received these original letters in the usual way—through the mails—due course of mail. I recognize these carbon copies, they were mailed to the Comptroller from the bank. Those signed '.....,' cashier, were signed by myself, I signed them as cashier of the American National Bank.

These papers here are copies of our reports to the Comptroller of the Currency as called for by the Comptroller, beginning the 1st of September—th 12th, 1914, and the last one is November 27, 1916. They are reports just as they are called for; there is no fixed time for making these; there are at least five or six, or more. The first is dated September 12, 1914, the last one November 27, 1916.

Statements that banks are required to publish are gotten from these statements; it is a condensed form of this statement, and this would show the same facts as would be shown by the published statement.

Without having verified it, as to the exact dates, the first one or two of the reports after August 1, 1914, the balance that was on the books of the American National Bank, as due by the Commercial National Bnak, was reported under items due from banks; after that it was reported as loans and discounts,—in the majority of these reports I think it is included in loans and discounts, the amount due from the Commercial National. The first two or three under due from banks is included in the lump amount from banks.

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These are the reports of the liquidating agent of the Commercial National Bank covering quarterly periods—they are only made out at the end of the quarter; they are supposed to be made four times a year and to cover each quarter. When they don't cover one quarter it shows for what period it is; sometimes it covers one or two quarters, laps over, more than one quarter. They begin June 30, 1917, and run to June 30, 1918.

The originals of the earlier liquidating agent's reports of the Commercial National Bank are in the Comptroller's office on file, and I do not know where the copies are. Mr. Karsten made up some of them, and

I have not been able to find the copies of them. That item due June 30th, 1917, to the American National Bank,—the amount is $317,221.00 at the beginning. That was reduced by collections, $853.57 and at the end it showed $316,368.20. The last one there of June 30th, 1918, shows due the American National Bank $309,811.71. The originals of the other reports were forwarded to the Comptroller. I don't know about the copies. I will attempt to find them for you.

R. C. SOUDER, called to the stand for cross examination, testified:

Cross Examination.

I was assistant cashier of the Commercial National Bank prior to and up to August 1, 1914.

The whole assets were changed as to their physical location; the whole bank was changed from the Commercial National to the American, between Aug. 1, 1914, and Aug. 3, 1914.

589 The building known as the Commercial National Bank building is located in the City of Macon on the triangle block, the streets are Cotton Avenue and Second Street. And the American National Bank is located at Third and Cherry streets on the corner. It is about a block and a half from the building known as the Commercial National Bank Building to the place where the American National Bank was located from August 1, to August 3, 1914.

On August 3, 1914, I was engaged in working in the building of the American National Bank. The banking room in which I was engaged at work was, principally, the banking room of the American National Bank, the

room in which the American National Bank carried on all of its banking business.

E. Y. Mallary was president of the Commercial National Bank August 1, 1914.

J. J. Cobb and Cecil Morgan were vice-presidents. Mr. Cobb is dead.

I remained at the work that was being carried on in the banking room of the American National Bank from August 3, 1914, to August 15, 1914. It is true that whatever I have testified to, with reference to what transpired after August 15, 1914, has been from an inspection of the records and not from actual observation.

I was under the direction and instruction of Mr. E. N. Lewis, when I was at work for the Commercial National Bank in the Commercial National Bank Building. I received instructions from Mr. Cobb at times—from all of them; from Mr. Mallary at times. They were the responsible heads of the institution.

I do not know that Mr. Lewis received instructions from anybody when he was cashier of the Commercial National Bank in the Commercial National Bank building, he usually conferred with them; he had about as much discretion as any of them. I won't say that the cashier did not receive instructions from any one; he probably did receive them from others at times,
590 and he acted on his own judgment some. He did receive instruction from Mr. Cobb and Mr. Mallary.

I do not think that Mr. Mallary went around to the American National Bank's banking place August 3, 1914, when I went around there, I am not sure; he might have been there for a day or two. I do not think Mr. E. Y. Mallary did, he possibly did for a day

or two. Mr. Cobb went there for the first few days. I can not say definitely and certainly how long Mr. Cobb was there, nor positively for what length of time he was there any day at all; he was there for the first few days all day, then, after that, he was in and out a good deal. He met the customers as they came in, and assisted them in the transaction of their business. I do not even know that Mr. Mallary was there; I am not positive that he was there, possibly he was. If he was, he did the same thing—met the people as they came in and showed them where they could get their business attended to.

I understood in this transaction that the American National Bank was going to pay off the stockholders of the Commercial National Bank—I mean depositors. I understood they, American National Bank, were taking over the ashets as collateral security for the money they paid out to the depositors. I understood that the American National Bank was taking over the collateral of the Commercial National Bank to secure them for paying off the depositors, and understood that they were to pay off the depositors and all creditors of the Commercial National Bank; I do not know how else to answer the question. I understand the question—I have answered it as well as I can. That is the only way I understood they were taking over the business. That was probably one of the prime motives, that the American National Bank wanted to get the deposits
591 of the Commercial National Bank—to see if they could get the business.

I have been in the banking business a great many years; have had a great deal of banking experience.

The deposits of the Commercial National Bank aggregated, probably, around a million dollars, I think, at that time.

That additional business would be a very considerable inducement to any bank, commercial bank. To get that business might be a very attractive feature of any arrangement.

I presume if I testified that the minute book of the Commercial National Bank since August 8, 1914, had been in the vault of the American National Bank, that it is true.

I testified in answer to the question: "When was the book carried down there—to the American National Bank," I don't know exactly the date that the book was carried, but I presume it was when all the effects were carried down to the American. My recollection is, that it was August 3rd, 1914. I think that book has been in the American National Bank vault since that time. I do not know who has had the custody of it all that time; this is the first time I have seen it since they failed.

I testified that when the assets of the Commercial National Bank were carried down to the American National Bank, between August 1, and August 3, 1914, that two or three windows were assigned in the American National Bank's banking room to the employees of the Commercial National Bank who went down there. They were right along on the same side with the windows of the American National Bank employees, and in the same room. There was closed partitions between them, with doors leading from them into the main banking room. There were three windows I think. I think probably Mr. Lewis—Mr. E. N. Lewis—assigned the places; I think Mr. Lewis assigned them directly to the employees of the Commercial National; who made

the arrangements with Mr. Lewis for the Amer-
592 ican National Bank, I do not know.

I do not know who in the American National Bank assigned that space. Mr. Lewis directed us where to go; I do not know who directed him.

From my experience in the banking business, it has been my observation that quite a few of the depositors in banks are rather timid and somewhat difficult to handle. You can't always hold deposits from one bank to another. I do not think that you have to humor a man along in order to get the transfer accomplished, not specially. Just state to a man that the other bank would like to have his account; you do not have to insist on his leaving it there; some fellows you might have to insist on leaving it there, or have to humor them. There are some with whom some little time and persuasion would be required to bring about a transfer; you might not bring it about then, they might want to put it in some other bank. There might be some who, after a period of persuasion, would make the transfer, who are not willing to make it immediately. That has not been my experience; I had never had any other experience in that line; I do not know that it was true of my own experience there.

I do not think any new loans were made by the Commercial Natl.; that would be a matter of record, the books would show it.

I testified before that it made collections for quite a long while. We did not handle any paper sent to us for collection; we turned them over to the collection department of the American National Bank. The real remunerative, money-earning business of a bank, from my experience in the banking business, is loaning money. That is the most remunerative. The collection business is not very remunerative, but take it along with

the other, it amounts to quite an item. Those are the two principal items of the banking business. I do not think either of these was done in the name of
593 the Commercial National Bank after August 3, 1914.

A bank can not perform the usual functions of a bank without loaning money and making collections, not if they are continuing in the banking business; but when a bank is in liquidation, it never will liquidate if they continue to do those things; never would get it liquidated. I do not think a bank in liquidation would lend money, make new loans, or receive collections. That is the reason we did not receive them after August 3, 1914, because the bank began liquidation at that time.

I testified in connection with my testimony as to deposits or checks drawn, 'suppose a man came and wanted to check ont his bank balance', he was asked to leave his pass book to have it balanced, to see if it corresponded with our books; that is true.

That was not the usual and customary way of conducting the banking business. There could have been a dispute with a man as to his account, or he wanted to know his correct balance.

I do not think without a dispute I would have asked a man who presented a check to leave his bank book to be balanced, unless the bank on which the check was drawn was being liquidated, for the purpose of being fused or merged with another bank. I would tell the man usually his bank book would be ready the next morning. If a man drew a small check on the Commercial National Bank, some of those small checks were paid over the window. In some cases, if the check was of any considerable size, if he wanted the cash he would be referred to the paying teller of the American National Bank, and, in some cases we drew a check on the Ameri-

can National Bank for the amount, and he could take it to the Fourth National Bank or the Citizens Bank, or anywhere, and get it cashed. For book keeping purposes it went through the records for cash. It all went through the records, if he did not call for the cash.

In the long run it all went through the rec-
394 ords of the Commercial; the Commercial National would give the American National a check in settlement; he would be paid first by the American, but eventually paid by the Commercial. That is, when I balanced up the items for the day, it would be paid.

When I testified about the number of checks that were drawn and the number of deposits made, that is for the first few days after August 3, 1914, I probably could segregate those items and tell which were cash items, involving the passing of actual cash, and which were items of accounting, by seeing the check. I could not from memory. I have not attempted to do that.

In my testimony in reference to these matters, I was referring to the fact that several checks were made and several deposits made; I could tell from the particular check.

I could not tell how many checks were actually collected without having the checks themselves. I could not do it now because I haven't the checks.

Neither then nor now do I undertake to say what items were cash items, either as to the number, the aggregate amount or person, without the customer's checks. The deposits speak for themselves, whether they were checks or cash or deposit slips on some other bank; the deposit slips will show that. I have not the slips. I did not have them before.

transactions. Cash was passed in to us on deposit, and I don't know that I know what you mean by cash

cash given out on checks; I do not exactly follow you about cash transactions; if a man came in to make a deposit we took it, either cash or check.

I do not think I was asked the question before how much in deposits, in actual cash, passed over the counter. I was testifying as to the aggregate items shown by the records when I called out amounts I was
595 getting it from the records.

I do not know that I know what you mean that I did not have reference to actual money transactions. You mean actual cash, as contra-distinguished from checks—I could not tell; the records here didn't show. I know that money is actually paid over the counter to customers, and that money is actually paid into the bank as deposits.

I did not testify before about handling actual cash instead of checks; I was not asked that particular question, I don't think.

It is reasonable to suppose that with the additional volume of business shown by the records and the books of the Commercial National Bank, if another bank in Macon should take over that bank, with all its records and assets, it would need additional clerical help. And a man who had actually been handling the records and the immediate transactions with the customers of the Commercial National Bank were more familiar with the customers and with the records than any one else in Macon.

I do not know that the checks were always drawn by Mr. Lewis, totalling the amounts that had been paid out during the day by the American National Bank for the credit of the business of the Commercial National Bank; some of them might have been drawn by me; that was the custom, the American National Bank would present the amount paid by it, and we would

give them a check, for the daily settlements, in the aggregate. That enabled the force at work in the part assigned to the administration of the Commercial National Bank to check the daily transactions, and, I presume, gave the officers of the American National Bank an opportunity to check the daily transactions.

I think it is true that this would have been the proper and necessary plan, if at the end of the administration of the affairs of the Commercial National Bank
596 an accounting was to be made by the American National Bank to the shareholders of the Commercial National Bank for any over-plus that might remain—the excess of assets over liabilities.

I think from a book-keeping standpoint and constant checking, it would have been necessary to have followed than plan or some other kindred plan in order to make a proper accounting at the end of the administration of the affairs of the Commercial National Bank.

Several times a day, maybe, a deposit was made in the American National Bank to the credit of the liquidation or administration of the Commercial National Bank; I could not state positively, the records show.

I suppose during the first week or ten days—I do not know whether more than one a day, I think the receiving teller usually made deposits about noon, probably not more than one or two, then again there might be several. You see all the tellers would combine it into one teller, and only one teller made the credit to the American—it was all thrown into one credit; it might be one credit or more than one, it could have been just one

I do not know that previous to August 1, 1914, that the Commercial National Bank made deposits with the American National Bank.

After August 1, 1914, the next day was August 3rd, 1914.

One of the employees of the bank made the deposits usually. It might have been one or more than one a day; it would be hard to tell how many. For the first days I do not think there was hardly a day passed that there was not at least one deposit made.

One of the bookkeepers usually went to the Clearing House, I think a young fellow named Todd. I
597 mean he was going there before August 1st, and I think he continued to go. I would not state that positively; that was his custom, and it was his duty to go.

It might be true that we did not have any checks on other banks—if we did not they might have checks on us, but as a matter of fact, we did have checks on other banks. Some may have come through the mail; some through the window, deposits.

I am positive a man went from the force that was taken down there from the Commercial National Bank to the Clearing House. I said while ago that I could not state positively what man went. It was the custom for young Todd to go, but whether or not he went, I do not know; but somebody went for several days.

The Commercial National Bank had a regular collecting teller, and he was probably more familiar with the persons whose notes were held by the Commercial National Bank than any person connected with any other bank would be.

When collections were made on bills receivable, the amounts were deposited in the American National Bank. That was not the usual and customary way of doing a banking business.

As soon after August 3rd, as reconciliations could be made, all balances in foreign banks were checked out in favor of the American National Bank—a good

many—some were checked out in favor of other banks possibly.

I closed out these accounts as soon as possible—as soon as we could—after August 3, 1914. I immediately set about making transfer of all bank accounts and reconciliation, and closing them out. That would not have been done by a bank doing a usual and ordinary banking business that was not in liquidation. I think all of these accounts with other banks were practically closed out within ten or twelve days. That was about as soon as they could be closed out.

598 Mr. J. M. DeBorde was working down there under the same situation I was.

I testified in regard to employees of the Commercial National Bank doing work down at this banking room of the American National Bank—this voucher No. 1967 to C. A. Tharpe—he was one of those employees, working under the same conditions that I was; he worked there considerably longer than I did. This voucher is signed E. N. Lewis, cashier; that is the Mr. Lewis to whom I referred. That O. K. is Mr. Bozeman's. He was assistant cashier of the American National Bank. He did not have anything to do with the Commercial National Bank.

I drew vouchers when I paid salaries previous to August 3, 1914. Nobody O. K.'d them. Mr. Lewis or myself drew the vouchers without any O. K., and I didn't have to have anybody's O. K.

This voucher No. 1967, for $213.60, signed by Mr. Lewis, covers salaries, for the same class of employees that I have been referring to. Mr. Lewis, himself, and Mr. DeBorde, and Mr. Tharpe, and E. Y. Mallary, Jr.

Mr. L. P. Hillyer O. K.'d that voucher; he was vice-president of the American National Bank, and was at that time. Mr. Hillyer did not have anything to do with

the Commercial National Bank; he never had anything to do with it. He was only vice-president of the American National Bank.

It had never been the custom, nor ever been necessary, previous to August 3, 1914, to get Mr. Hillyer's O. K. on these vouchers.

This one, $187.50, dated October 1, 1914—No. 1969—for salary of E. N. Lewis, J. M. DeBorde and E. Y. Mallary, Jr., is right. Mr. E. C. Scott's O. K. is on that; he was cashier of the American National
599 Bank. He was in no way connected with the Commercial National Bank previous to August 3, 1914.

Previous to August 3, 1914, it was not necessary to get Mr. Scott's O. K. on my vouchers or pay roll.

This one, No. 1976, for $12.00, for salary of E. Y. Mallary, for six days in October, is O. K.'d by Mr. Hillyer. This one, for $157.60, for Mr. E. N. Lewis and J. M. DeBorde, Jr., is Mr. E. C. Scott's O. K. That is the same Mr. Scott.

This one, November 30, 1914, for—No 1992, salary of J. M. DeBorde, is Mr. E. C. Scott's O. K. That is the same Mr. Scott.

And this one, for $57.50, dated December 1, 1914, for salary of J. M. DeBorde, is Mr. E. C. Scott's O. K. And this one, December 3, 1914—No. 2000.00 for $57.50—Mr. DeBorde's salary, has Mr. E. C. Scott's O. K.

I think there are a good many pay checks or pay roll vouchers issued after August 3, 1914, that did not have to have the signature of the O. K. of one of the officers of the American National Bank; I think so, and salary checks. I find this one. This one (referring to voucher or check selected by witness) is O. K.'d on the inside by Mr. Hillyer. That was the first voucher issued for salary to pay salaries after I went down there,

O. K'd by the vice-president of the American National Bank; the very first salary voucher issued.

It is not customary for a bank doing a usual banking business to have its salaries vouchers O. K'd by another bank before they are paid. I never heard of such a thing.

I think if a transaction involving an administration of the assets of a bank, with an obligation on the part of the person or bank conducting the administration to pay over the excess of assets over liabilities at the end of the administration, after deducting the costs, the expenses of the administration, it would be altogether proper to keep the expenses of the administra-
600 tion by vouchers.

It could be properly kept by voucher or check, I think that would be proper. And I think the accounting would be to make that a charge and expense against the properties being liquidated or administered, and the proper way to evidence that charge would be by check or voucher drawn by those having charge of the liquidation, or O. K'd. as these were drawn.

I think the Post Office made a deposit several times, in regard to the deposits made after August 3, 1914, for sometime afterward, about every other day. They ran three and four thousand dollars, sometimes less, sometimes more, maybe. The location of those deposits are regulated from Washington, and the place of deposit could not be changed except with authority from Washington, so that is true that it was necessary to continue those deposits in the Commercial National Bank until the authorized change could be made. There might have been some few of these deposits made to cover overdrafts. I do not know that there was any; there could have been some few.

I spoke of a deposit as late as September 8th, as shown by page 121 of the record, I was asked: "how late do you find deposits made along on there—what is the last item of deposit you find made?" Seems to be September 8, 1914,—I see on that date a deposit, individual deposit $132.73. I do not happen to know who made that deposit, I did not know at the time.

The account of E. L. Martin on September 8th seems to be $132.30; it shows $132.30, E. L. Martin, collateral account. It probably meant some collection we had there to be collected and applied to his collateral account,—some indebtedness to the bank, and probably placed to his account. He might have made a deposit; the supposition is it was a collection
601 that we already had there; that is the normal and logical thing, that it was a collection already on hand.

I would not undertake to say what proportion of deposits made after August 3, 1914, were made to cover over-drafts; I do not think there were very many, I would not undertake to state how much. It has been a good long time ago. We usually tried not to have many overdrafts. There may have been more than I think for, I don't think, though, a great amount was made to cover over-drafts. Really, we tried to hold down deposits as much as we could; we did not want to take them if we could get out of it. The only way we would take them, some people might be uncertain about their accounts; said they had checks out and did not want to get their account disarranged, and we were trying to get it closed out as fast as we possibly could We were making an effort to get depositors to keep their funds in the American National Bank as much as we possibly could. And, unless a man was being really humored along, with a view to having a full transfer

of his account made, or unless there were overdrafts, or a man was afraid he had checks outstanding, we discouraged receiving deposits as much as we possibly could.

When we were running the Commercial National Bank on and prior to August 1, 1914, we had a register for the receiving teller, and one for the paying teller, and one for the mail teller, and one for the collection teller.

Under the plan of the discouragement of any banking business, which I and others brought about, the receiving teller's register was discontinued probably, and any further deposits were made through the paying teller's books; the books were arranged so that any branch of the teller's department could be made on his books.

602 On page 112 of the record I testified in reference to the date of August 7th, in reference to this receiving tellers' book, that 'he ceased to keep this book on that day' that is probably true, I got it from the record, and I stated that it was consolidated with the paying teller's book, and, I think, probably before the mail teller's book was closed; the books will show, and he handled the items that came through the mail.

And after the items which were in transit, or put in transit between August 1st and August 3rd had reached here, and had been handled, there was no more of that business. I think all the items of that kind handled were either in transit at the time of the transfer of this bank, or doubtless were sent out before notice became current that the bank had gone out of business.

I will state that within a short period after August 3, 1914, checks drawn on the Commercial National Bank between those dates, if they wanted the money, they

were paid over the paying teller's window—checks drawn on the Commercial National Bank.

A man transferring his account from the Commercial National Bank to the American National Bank,—if he had a small balance, when he got his money he could deposit that; if he had a large balance, or on some occasions a small balance, his check would be O. K'd. If the check was deposited, it went into the aggregate checks that way; if he got the money from the American and deposited it in the American, in went in those checks. Quite a good deal of the accounts were transferred from the Commercial National Bank to the American National Bank at that time.

When I refer to what the paying teller wound up with at the end of the day's business, referring to the amount of money on hand, I mean cash and cash items.

Beginning after August 3, 1914, I don't know whether the great bulk of this was cash items, as contra-distinguished from cash; the books will show that; I don't remember, I don't imagine he had much cash
603 at that time. These cash items might consist of checks that come in that he didn't want to charge up; or, it might be post office money orders, or vouchers on different railraods. They usually handle the cash items at night, and send it out the next morning cleared.

The amount of actual cash after August 3rd was very small—I don't think there were so many cash items. You see about the 12th or 14th the amount of cash was considerably smaller. As a matter of fact, on August 3rd we had almost the amount of cash we went down there with.

When I speak of the paying teller paying out so much money, on a given date, I mean he would have to pay it out in actual cash. At the close of business all checks

that had been deposited through the American National Bank would show on the paying teller's books at night, under a separate total from what he had paid out.

There is assurance what amount was cash when the paying teller paid out such and such an amount of money after this consolidation; I think the amount actually paid out in cash will show on his book.

It would be a cash item in that particular sense—I do not think I made that distinction in my former testimony, in actual checks paid out in cash and cash items.

I should think that in administering the affairs of the Commercial National Bank, regardless of the object or nature of the transaction between the two banks, if there was an obligation at the end of the administration to account for the excess of assets over liabilities, substantially these same records had to be kept.

I think this paying teller's register was kept as a record of the progress of the administration or liquidation for some considerable time after there was no cash.

It would indicate from those vouchers that it was necessary to get the O. K. of one of the responsible officers of the American National Bank before the item could be passed after August 3rd.

604

I don't remember that I testified that Mr. Mallary himself never signed but one check down there so far as I knew.

These clearance checks—checks drawn on the American National Bank—I testified about on page 130 of the record, I testified that the first one was signed by E. Y. Mallary, president, and the next one by E. N. Lewis, cashier, and next one R. C. Souder, assistant cashier, and the next one by myself, and so on; I do not

recall the date of that check signed by Mr. Mallary. I do not recall whether or not it was for items accrued prior to August 3, 1914.

That is the check to which I refer, I think. If I testified to only one check signed by Mr. Mallary, that is the check, on August 3, 1914. That was for the Clearing House item on that day. Those items necessarily originated prior to that time. The chances are that some of the originated after the morning of August 1st, and some came in the morning of the 3rd, probably.

The bulk of the clearings for any given day were not necessarily for the previous day; some of them came in at eleven o'clock, and everything up to that time was cleared that day. Checks were actually taken in prior to August 3rd, and probably up to eleven o'clock that day. The checks were honored by some other bank prior to August 3rd.

All the work that was done down there, except these deposits which I discouraged, or which I took under the circumstances described, was done in the process of liquidating the Commercial National Bank and turning over the business of that bank as rapidly as possible to the American National Bank.

I do not know by whose direction the transfer
605 of outstanding deposit accounts was done. The records do not indicate that there were individual depositors checks drawn, but indicate that Mr. DeBorde, acting on his own initiative or under directions from some one, drew a check and transferred the whole thing— just made a debit slip of it against the account, and, in that way, the transfer to the American National Bank was made.

I do not know what amount is shown by the record of the liquidation of the Commercial National Bank to

have been realized from the assets of the Commercial National Bank. I can not approximate it.

When I spoke in my testimony of overdrafts, or amounts due by the Commercial National Bank to the American National Bank I had reference to the net result of the entries on the books as they were kept there at the close of each day's business. I was going purely from the books as kept there when I testified that on some specified date the Commercial National Bank owed the American National Bank so and so, or that the Commercial National Bank was overdrawn with the American National Bank so much, and that was the entire significance of my testimony.

That is true that the total withdrawals on the closing of accounts, a good many of which were transferred to the American National Bank, was so rapid that immediately we ran the two individual ledgers, which had previously been in use, and consolidated them into one. The books ran out, and we had to open new books. The books only ran a given period, so we had room to put it all on one book instead of two. I do not recall whether or not that was about August 15th; but the books only ran about eight weeks, I think, or twelve weeks.

I spoke of the delivery at the end of the month of statements by the American National Bank
606 showing the condition of the accounts at that bank with the administration or liquidation of the Commercial National Bank—I presume that statement was delivered by the American National Bank to Mr. Lewis. I do not know whether any delivery of it was ever made to Mr. Mallary, or to Mr. Cobb, or, whether it was ever made to any one of the directors of the Commercial National Bank, or, to any member of

the Finance Committee—I do not know about that, the delivery of these statements.

Mr. Lewis' compensation down there came on the O. K. of the officers of the American National Bank—the salary paid him. It is indicated in those vouchers, and so far as I know, he received the same salary he did at the Commercial National Bank—the same in amount. But I should think that salary was charged against the administration as an expense of administration. I think the American National Bank was conducting that administration or liquidation.

Yes, sir, I remember that advertisement appearing in the Macon Daily Telegraph on Sunday morning August 2, 1914, signed by the American National Bank, and the direction given it by the American National Bank that checks should be written on the blanks of the Commercial National Bank as heretofore until directions were given for the transfer of the depositors' accounts or until the depositors should make other arrangements.

I do not know whether it had anything to do with that announcement that I wanted the checks drawn and presented. The drawing of checks on the Commercial National Bank after this time was in line with this announcement.

And, I think, beginning on August 3, 1914, the administration or liquidation of the Commercial National Bank was pursued as vigorously and expeditiously as possible, consistent with the interest of all concerned.

607

Re-Direct Examination.

It must have been August 15th—the first day seems to be August 17th—August 15th was Saturday, and they started the new ledger book Monday morning, that they

transferred the account previously run on the two ledgers and consolidated them into one.

The individual ledger ran to November 6, 1914. There was no other ledger after that time opened. The remaining accounts, not closed at that time, were transferred to the books of the American National Bank; that was when the bulk transfer of the remainder was made, at the end of that ledger.

When checks are given overdrawing accounts, it is customary to have such checks O. K'd. by a responsible officer of the bank before the teller pays them.

I assume that these expense accounts of the Commercial National Bank over drew its account with the American National Bank; I do not know positively, I think possibly it did.

I do not think there was any time after the transfer on August 1, 1914, when the account of the Commercial National Bank was not largely overdrawn, and continued to get larger, and ran up to several hundred thousand dollars. That would be a sufficient reason for O. K'ing a check of the Commercial National Bank which would overdraw its account.

Re-Cross Examination.

If the American National Bank had contracted and agreed to pay all the expenses of liquidation or administration at the outset, it would probably have been necessary from the standpoint of bookkeeping, treating it as our own draft for the officers of the American National Bank to O. K. it.

Bookkeepers usually have no discretion is why
608 it was necessary from the standpoint of an overdraft for an expense item to be O. K'd. If the American National Bank had instructed the book-

keeper to pay them regardless of how much it overdrew, I don't think it would be necessary in that case.

In the event the American National Bank definitely and positively agreed to pay the expenses of administration, any O. K. of an officer there on any expense voucher, would partly mean the approval by the officer of the item itself, and not of the fact of an overdraft. The O. K. would simply mean the approval of the item, if it was to pay it regardless of the amount, under these conditions. Under those conditions, it would be an O. K. of the item, regardless of the propriety of the item itself, and instruct the bookkeeper to charge it up.

I do not know that it is true that if a voucher for the expenses of the American National Bank is submitted to or O. K'd by the officers—if a voucher is drawn under the direction of an officer—when a voucher comes in signed by an officer it is proper for the bookkeeper to charge it up without instructions. That is true that if Mr. Scott, Mr. Hillyer, or Mr. Bozeman O. K'd a voucher, it had the same authority as though it was drawn by the officer himself.

Re-Direct Examination:

Those checks for the payment of expenses of the Commercial National Bank were checks drawn by officers of the Commercial National Bank on the Commercial National Bank.

Examination of E. C. SCOTT Continued:

Cross Examination.

I was on August 1, 1914, cashier of the American National Bank, I remained cashier of that bank until it began liquidation, and I am still cashier.
609 That is my rubber stamp signature to the letter you exhibit to me on the letter head of the American National Bank of Macon, dated August 1, 1914, unaddressed. Whatever went out the stamp was applied on with my authority; we had several forms of letter; some went out and some did not; and whether that is one that went out I couldn't say—some of them were not sent out. I recognize the letter. I did sign a letter of that form; whether or not this exact letter went out I can't say, unless it was addressed to some of the customers.

That rubber signature—E. C. Scott—was applied by my authority, if it went out that way. I don't know whether the letter that went out went to all the customers or not, it went to a great many of them. If a customer had a small, inactive balance, I don't think it went out to them. It was sent to practically all the active accounts, all the customers whose business we desired this letter was sent to. Whether or not that went through the Savings department I don't know; a different letter went through the Savings department. I couldn't say who prepared the letter, my best recollection is that it was done either by myself or Mr. Hillyer, or both together; we usually worked together in getting out letters of that kind. It was done with the authority of the head officer of the bank; I don't know whether the directors knew of it or not, I couldn't say as to that. Mr. Taylor would know about it and Mr. Hillyer.

That letter was written after the transaction had been agreed upon between the officers and directors of the two banks, the American National Bank and the Commercial National Bank, by which the American National Bank took over the assets of the Commercial National Bank; the letter that was sent out was written and forwarded after that; no letters were sent out until after the trade, after the deal had been closed,
610 whether that was one of the ones that did not go out or not I can not say; there was one or two forms of letters gotten up that were not sent out; that is my recollection. I couldn't say wheher this form of letter went out or not; I did prepare several forms and go over them, I don't know whether that was the form selected to be sent out or not. If this form of letter went out that is the one that was deliberately and advisedly prepared.

After conference with the bank officers, we took that one and went into it. We did not stamp with our signatures the forms that did not go out.

As I was going to say, when we are sending out circulars it is sometimes easier to stamp them, affix the signature before the address is filled in, and we had several batches there that I instructed some of the boys to stamp up. I can't say whether we stamped up any except those that were to be sent out. Well, there is no object in stamping up those that did not go out; that letter right there may be the one we decided, after summing it all up, that we did not want to go out.

I can't say whether we destroyed the ones that we did not want to go out. If they had been stamped with my signature, and I did not want them to go out, I did not necessarily destroy them; letters of that kind we used as scratch paper.

I can't say whether or not this letter was sent by me, or by my authority, through the mails to certain or many of the customers of the Commercial National Bank.

That is my recollection, that those letters were not actually mailed until Sunday, August 2nd; the 1st was on Saturday, and Sunday was the 2nd.

I do not know whose signature that is on the envelope. That is the envelope that I used at the American National Bank. My letter head at this time advised that our capital and surplus were nine hundred thou-
611 sand dollars of the American National Bank.

In the body of this letter we say 'with a combined capital and surplus of over one million dollars;' we did not take into account in that the figures of the Commercial National Bank; we had an undivided profit account—something over a hundred thousand dollars, which, of course, is the same as surplus; I don't remember just what was the combined resources. I could not say without seeing what the figures of the American National Bank and the Commercial were at this time. Some of the resources of the Commercial National Bank were taken into consideration. Otherwise, I would not have mentioned that they were 'nearly five million dollars,' and would not have used the word, 'now.'

No, sir, I never saw the notice sent out by Mr. Lewis to the stockholders of the Commercial National Bank, before it was sent out; at least, I have no recollection of it. I do not remember to have seen it.

I could not say whether I saw those letters or not; some of them I did see and some I didn't; but whether I saw that particular one I could not answer.

It is more than likely that I have seen that form of letter dated August 1, 1914, which announces a consolidation of the banks, sent out by Mr. Lewis the same date as my letter, and making somewhat the same an-

nouncement—I would not say positively that I had. I should say that the chances are that I did see the last letter you have just exhibited, but I could not state that as a positive fact. I don't know that I saw a form letter sent out by the Commercial National Bank as a companion letter to the one I sent out. The chances are more than likely I did see it.

I do not recall having seen the printed notice of the call special meeting of the stockholders of the Commercial National Bank for September 30, 1914.

612 I don't think I ever saw that before; it was very few of the notices in regard to stockholders' and directors' meetings of the Commercial National Bank that I did see. I will not say that I ever saw it before.

I recall this advertisement appearing in the Macon Daily Telegraph of Sunday morning, August 2, 1914, signed by The American National Bank, Macon's Million Dollar Bank. I can't say whether or not I was present when that advertisement was prepared; I knew the advertisement was being prepared to go in the papers; I can't say now that I was present.

Mr. Hillyer and Mr. Taylor, I think, acted for the American National Bank in its preparation. That is my recollection.

Where they had the funds and credit in their account, it was the desire and wish of the American National Bank, that, until the business could be transferred to the American National Bank, that checks drawn on the Commercial National would be honored.

I understood by the transaction, whatever its other characteristics, that the American National Bank obligated itself to pay the expenses of administering or liquidating the Commercial National Bank.

In paying any expense of the Commercial National Bank we required all expense vouchers to be either signed or approved by some officer of the Commercial National Bank, so I understood. That was the understanding.

Now, the allowance of any overdraft, in the sense that the American National Bank would pay out its moneys in advance of the realization on the assets of the Commercial National Bank, had already been agreed upon. And, on August 1, 1914, it was agreed that the expenses would be paid, even though there had not been sufficient realization on the assets of the Commercial National Bank to make up for moneys paid out by the American National Bank, for liabilities
613 for the Commercial National Bank and the expenses of administration.

We required an O. K. of an officer as to the propriety of the amount of the expense charge, that was the purpose of the O. K.

The salary vouchers of Mr. Lewis and all the men who had previously been in the employ of the Commercial National Bank, and who were moved down to the American National Bank, were supervised and O. K'd, as I have described. All expenses were paid out there, and all other expense items were likewise O. K.

Practically all disbursements for the account of the Commercial National Bank were either O. K'd. or the check was signed by an officer of the bank; of course, there might have been some few items, but practically all were either approved or O. K'd. by an officer of the Commercial National Bank; that is my recollection. I know that was the requirement.

As well as I remember, the space down there assigned to the men who had the actual handling of the liquidation or the administration of the affairs of the Commer-

cial, was agreed on in the offices of the bank; we agreed on and arranged a plan that we thought would be the most advantageous for the handling of the business there; by the officers of the American National Bank, together with the officers of the Commercial National Bank.

Mr. Lewis, as I recall it, was the officer of that bank.

I can not say what particular person acted for my bank; I know I was present myself and discussed it with Mr. Taylor. Mr. Lewis did not just go down there and take the space.

I do not recall now an instance of two national banks conducting a banking business in the same banking room. I could not say that it is forbidden by the regulations. I do not know.

I said in my testimny on page four of the record, section 2, that when the records formerly kept by the Commercial National Bank were brought down

614 to the American National Bank, the accounts of the customers of the Commercial National Bank were not immediately transferred to the books of the American National Bank.

I think my testimony there, previously, will show that I said where they wanted their accounts transferred they issued their checks for them; in some instances their accounts were transferred to other institutions.

I couldn't answer that question you ask, if I conceived that I had the right to take their accounts, without their consent, and transfer them to our bank, because we handled it as we did under the advice of our counsel; we discussed the matter with them.

We were getting in all the business we could for our bank, and that was one of the inducements that persuaded us to make the arrangements we made.

I think the Commercial National Bank had deposits of something over a million dollars; I don't remember the exact figures. That was quite an attractive feature of the trade.

Well, of course, to try to force depositors from one bank into another just by book entry, would not have been good policy; I am very free to admit that to try to force them to would not be good policy. It was decided—we felt that it would be best to allow them to take out their balances as they called for them; and would also enable us to keep the records clearer.

Answering your question, 'in order to get those transfers, without friction, we provided that checks on the Commercial National Bank would be drawn on the Commercial National Bank, and the matter would be handled in the smoothest way possible, to induce the customers of the Commercial National Bank to go over to the American National Bank with their deposits,' I can't say that that was altogether the object in doing it. I am free to say that, of course, we wanted to handle it with as little friction as possible, and we felt
615 that it would be better for a depositor to come in there and ascertain his balance, and transfer it to us if he chose to do so, or transfer it to some other institution, and make arrangements for protecting checks of his outstanding on the Commercial National.

We were making constant and continuous efforts, by tactful means, to keep these customers from carrying their deposits to other institutions; what we wanted out of this trade was to get that business, we wanted the deposits.

I said in my testimony before that Mr. E. Y. Mallary was around the bank there for two or three days, that is the best of my recollection, and Mr. Souder was there, after they came down there, for a period of about thirty

days, the best of my recollection. One recollection is about as clear as another on that point. I know that Mr. Souder was there for a longer time that Mr. Mallary, I know that.

I said that these men who came down there from the Commercial National Bank were paid by the Commercial National Bank, and not by the American National Bank; these men were engaged in administering and liquidating this bank. And it was agreed that the American National Bank should pay the expenses of that liquidation, and charge it against the administration. Sure, some of that bookkeeping was necessary in order to keep track of those expenses, and in paying for our help in the liquidation—the expenses of the liquidation; and, we thought the method we adopted—the voucher plan—was about as good as anything, from an accounting or bookkeeping standpoint.

If that had not been used, in view of our agreement to pay the expenses of the liquidation and to account to the shareholders of the Commercial National Bank for whatever over-plus might have been realized, some other system would have been necessary. We wanted
616 to keep a record of the expenses, and we felt that the method we used was as good as any we could use.

In accordance with this plan of having these depositors by a gradual process—as many of them as possible—carry their balances into the American National Bank, the American National Bank supplied, from time to time, money to the cage of the paying teller of this administration force, or liquidation force, in the same building and in the same room, but in separate cages.

The American National Bank turned over each day about the amount of cash we thought necessary, might be necessary, to have present in order to honor the checks

drawn, in accordance with the desires of the American National Bank.

In answer to the question 'how long the officers and employees of the Commercial National Bank continued to discharge their duties as such officers;' I answered, for a period of sixty or ninety days'—I was talking about Mr. Lewis and Mr. John DeBorde, as I recall they were there the longest; and, any other employees of the Commercial National Bank. Mr. Lewis' relation down there was as I have described it, and he was being paid as I have described it. When he went down there, he did not go under an arrangement to become an assistant cashier of the American National Bank; so far as I know that never was proposed.

That is correct, that so far as I know, Mr. Lewis did not receive any compensation except what came from that expense fund of the administration.

I would not call Mr. DeBorde an officer of the Commercial National Bank at any time; he was a teller —what you term a teller—had charge of the teller's cage.

I was asked, on my direct examination, as shown by page 10, of the record, section 2, who paid the expenses of the Commercial National Bank Building, and I answered the Commercial National Bank;
617 that was paid as an expense item of the administration, just like the salaries of these men who were doing the administration work; that is my recollecton. In order to keep the accounts straight, we had it charged up against the Commercial National Bank. That would have been necessary, in view of the duty to account for any overplus to the shareholders of the Commercial National Bank.

I was asked about the monthly statements, as to the dealings between the American National Bank and the

liquidation account of that bank, or the administration account which was kept in the name of the Commercial National Bank; I said we rendered monthly statements, and turned over those statements to Mr. DeBorde, and Mr. DeBorde was a teller, and had been a teller up at the Commercial National Bank; I don't know just what his speiific duties were at the Commercial National Bank, he came down there and his work in the administration force was as a teller, and he also did some work on the books, and, it is my recollection, that he was the only person to whom those statements were delivered month by month.

It would not be unusual for a statement of that sort to be specifically handed to a teller of a bank. We had a young man; that is, at that time, who served as auditor or general utility man, who checked up the statements, and filed them away. I did not always as cashier of the bank, see it; some officer of the bank was usually required to sign the reconcilement.

As I stated the reconcilements were made out by the auditor, and O. K'd. by him, and had to correspond with a bank ledger kept by another party; and they were brought to me in that shape as an officer to sign them. So far as the mechanical or figuring part went it was checked up before it came to me, but it finally came to me.

618 I don't know whether the reconcilement was taken in this case when we made the so-called monthly report.

Of course, we have reconcilements when dealing with a bank that is functioning. That is the proper and usual way to do it, with a bank that is doing a regular banking business.

I can't say off-hand just what was the amount realized from the assets of the Commercial National Bank. I

couldn't very well answer that without any figures before me. I should say there was as much as a million dollars; however, that is subject to considerable variation—it might be approximately that much—just roughly.

Re-Direct Examination.

I referred to expense items being paid on checks drawn by officers of the Commercial National Bank, but countersigned or O. Kd. by the officers of the bank. The question I had in mind was checks for expenses of the Commercial signed by officers of the Commercial National Bank. They were drawn on the American National Bank. The checks reimbursing us for amounts advanced were drawn on the American.

I have the checks for the expense items themselves. They were signed by Mr. Lewis, cashier, or John M. DeBorde, teller, and drawn on the Commercial National Bank. Those checks are for payment of expenses of the Commercial National Bank. Checks given in payment of expenses of the Commercial National Bank like officer's salaries. I had reference to where checks were drawn on the American National Bank reimbursing them for funds advanced by them to the Commercial National Bank.

I said the American National Bank would turn over to the tellers of the Commercial National Bank cash sufficient to meet their needs for the day; they would usually give a memorandum receipt for it in
619 the morning, and at the close of the business day, what cash they had on hand would be returned, and the difference between that and what they received, which was paid out, would be accounted for by a check of the Commercial National Bank on the

American National Bank, which would be charged to the Commercial National Bank.

I think the difference between the amount realized on the assets of the Commercial National Bank and the amount paid out by the American National Bank in payment of debts of the Commercial National Bank is, approximately, around three hundred thousand dollars; I think now about three hundred and twenty thousand dollars.

Re-Cross Examination.

You asked me particularly about voucher number 1999, dated December 22, 1919, signed J. M. DeBorde, teller, pay to the order of ourselves and drawn on the Commercial National Bank; the voucher is O. Kd.—signed by Mr. DeBorde, the ticket is O. Kd. by myself. This ticket is a specification of the amount and what for. My O. K. of the charge against the Commercial National Bank for the expense $217.44. It was for expense of redeeming and transportation of $292,600.00 circulation since June 30, 1913, to the time of consolidation.

I O. Kd. that voucher or specification written that way. I was cashier of the American National Bank at that time. That bill of particulars, I think, is made out by Mr. Bob Roberts(?), as I recall the handwriting. He was in the employ of the American National Bank at the time.

620 J. C. HINTON, witness for defendant, testified:

Direct Examination:

My name is J. C. Hinton. I was a stockholder of the Commercial National Bank, and a depositor with that bank up to August 1, 1914.

I live at 105 Lamar Street, Macon, Georgia. That was true on August 2, 1914, and on and about August 28, 1914.

I received a letter dated August 1, 1914, written on the letter head of the American National Bank of Macon, Georgia, and signed E. C. Scott, Cashier, through due course of mail. That is the envelope in which it came. It has 'after 5 days, return to American National Bank, Macon, Ga.,' on the envelope.

I received a notice dated August 1 1914, written on the letter head of the Commercial National Bank of Macon, addressed to the stockholders of the Commercial National Bank of Macon, Georgia, carrying the typewritten signature of E. N. Lewis, cashier, by due course of mail. That is the envelope in which I received it.

I received a notice dated August 1, 1914, written on the letter head of the Commercial National Bank and signed by E. N. Lewis, cashier, through due course of mail; this is the envelope this letter came in.

I received this notice, dated Macon, Georgia, August 25, 1915, signed by E. N. Lewis, cashier,—the notice of the meeting of stockholders of the Commercial National Bank to be held September 30, 1914; I received it by due course of mail, this is the envelope in which it was received.

I know of no other or further notice that I received as to the nature of the transaction between the two banks and the purpose of the stockholders' meeting, than shown in those notices.

621 Cross Examination:

I attended this stockholders' meeting held August 12, 1914, pursuant to this notice.

I recall the time something was offered and discussed, and I think, adopted.

I recall that W. T. Anderson at that meeting of stockholders made some statement, a part of which is about as follows:

"Mr. Hillyer, Mr. Taylor, Mr. Scott and Mr. Park passed upon each paper as it was presented, taking the statements of the officials as to what was behind them, and adopted their statements as true. On analysis of the assets under the hurried state of affairs, they put down $260,000.00 according to my recollection of prime paper. They put down $220,000.00 as what they called No. 2. By that they meant they could not realize upon it immediately. My further recollection is that there was about $660,000.00 or $670,000.00 of No. 3. Mr. Taylor repeatedly stated that he did not consider No. 3, but that it was paper he could not borrow on in New York City, so he discounted that No. 3 paper down to a 33-1/3 per cent basis, but the assets from this liability figured according to my recollection, about $443,000.00, and that was the margin on which they took it, that by the additional liability of the stockholders. Mr. Taylor stated he wanted the stockholders on their meeting to appoint a committee to work with him, to actively handle with him the affairs of the Commercial National in liquidating its assets."

I recall, that is general agreement with what I recall. I don't recall that specific statement about being backed by the liability of the stockholders.

I recall that Mr. Anderson made a statement at that meeting.

I do not remember who acted as secretary.

I can't say that I recall specifically the fact that a resolution was passed at that meeting, placing the bank in liquidation.

I think I did not attend the meeting held September 30th; I could give you a good reason why I think I did not, if it is worth while; I was so busy from the 15th of September to the 15th of October, and I never neglected College business for personal business—

622 and I don't think it likely that I was at that meeting.

My name does not seem to appear here as being present.

Re-Direct Examination:

Answering your question, 'whether or not, so far as you suspected and so far as you knew, you and other stockholders were called on to do and did do,—ratified the contract described in that notice, the contract of consolidation and liquidation,' that is what I understood we were there for.

Re-Cross Examination.

I stated I was a depositor in the bank. I checked out my balance with the Commercial National a very few

623 days after the contract with the American National Bank was made. I suppose I was one of the very first enticed by the advertisement

and these letters, to turn in my book and have it balanced. I turned in my pass book and had it balanced. I do not remember now just how my balance got into the American National Bank. I remember, that in some way, it got from one bank into another; I presume that was the due way of doing that. I do not remember drawing a check.

My business was transferred to the American National Bank. I made my own deposit with the American National Bank.

Re-Direct Examination.

Along about August 7th, very early, the entire balance of my account was transferred.

E. Y. MALLARY, witness for defendant, testified:

Direct Examination.

I was president of the Commercial National Bank of Macon, on August 1, 1914. I was also a member of the Board of Directors of that bank, and a member of the finance committee.

Mr. R. J. Taylor was president of the American National Bank. Mr. L. P. Hillyer was one of the vice-presidents. He was actively connected with the Bank.

I did have conversation with Mr. R. J. Taylor, president of the American National Bank, throughout the year 1914.

I had conversation with Mr. R. J. Taylor during the early summer of 1914, with reference to the Commercial National Bank and the American National Bank.

I told Mr. Taylor that I had been thinking about it a good deal, that I never did particularly like
624 the banking business, and had considered discussing with him the question of consolidating or merging the Commercial National Bank and the American National Bank. He said he was very much interested in it.

I told him then—when we discussed it at some length—I would prefer making the merger in the Fall; I thought by that time we could get in better shape. I particularly mentioned to him that we had loaned pretty heavily to certain parties, and I thought we had a very good promise of getting them materially reduced, and then the bank would be in good shape. He then said he would prefer to do it in the Fall; that at that time he would have more money on hand, and would be in better shape to carry the deal through then.

I don't remember the date, it was prior to that time I asked Mr. Taylor if he would loan to Mr. Jelks some money. My recollection is that we made this loan I speak of, that is, they loaned some money to Mr. Jelks, and, I think, discounted some paper for the Commercial National Bank.

That loan was for a definite amount of money; and then some time later, after that, we borrowed from the American National Bank some money on the building—on the Commercial National Bank building, and gave the banking house of the Commercial National Bank as security for that loan.

These transactions were for definite amounts. The security given by the Commercial National Bank was specific security, each of them separate, for that amount, for that particular loan.

My recollection is that it was Thursday night when I took up with Mr. Taylor the transaction which eventu-

ated in the resolutions of the Boards of the two banks of August 1, 1914. I went to see Mr. Taylor, and told him I understood that there were some rumors in town that our bank was needing some money, and stated the case to him; and Mr. Taylor stated then that he thought we had better consummate the deal we 'have got in mind now.' He referred to the merger of our bank with the American National Bank. I told him I rather agreed with him, and asked him what time he would go into the matter, and we agreed we would take it up on Friday night, or Friday afternoon, that is, the early part of the night.

That conversation and these negotiations were not connected with any application for a loan. It was carrying out the plan that we had agreed on, except we changed it from the Fall to that night to go into it; that is the only dfference.

This transaction of August 1, 1914, was not connected with an application for a loan.

I met with Mr. Taylor on Friday night, July 31, 1914. Mr. Hillyer, Mr. Scott and Mr. Park were present—Mr. E. C. Scott, cashier of the American National Bank.

And present, besides myself, representing the Commercial National Bank, were Mr. Cobb, Vice-President of the Commercial National Bank; Mr. Lewis, Cashier, and Mr. W. T. Anderson, one of the directors, and Mr. Lane, Attorney for the Commercial National Bank.

Mr. J. J. Cobb, I mentioned, is dead, and Mr. E. N. Lewis is dead, and Mr. A. W. Lane, Counsel I mentioned is dead.

Mr. W. T. Anderson, I mentioned, was a director of the Commercial National Bank. He was a member at that time of the finance committee. Mr. L. S. Dure was also a member of that committee.

We went through all the assets of the Commercial National Bank in this conference on Friday night, July 31, 1914, and discussed its affairs; it took us from early in the evening, I think, until about four o'clock in the morning.

I saw Mr. Taylor after conference and examination had been concluded. I asked him if he was
626 satisfied to make the deal. He said he was. I then told him I would be willing to make the deal on three conditions. He asked me what they were. I said, 'The first condition is, that you pay our depositors on demand.' He said, 'that is all right; I will do that.' He said, 'What is the next?' I said, 'That you give our customers the same consideration that we give them.' He said, 'I will do that.' He said, 'What is the other one?' I said 'That you will protect the interests of our stockholders.' He said, 'I will do that.' I said 'With these conditions I am willing for our bank to enter into the deal.' The merger or consolidation with the American National Bank.

Well, after that was settled, and we started out, Mr. Cobb remarked to Mr. Taylor, he said 'You have gone through all of our assets, and are as familiar with them as we are,' and he says 'What do you—how do you think our stockholders will come out?" He said 'I see no reason why they should not get par for their stock.'

I could not say absolutely who prepared the resolutions of the Commercial National Bank directors of August 1, 1914. I understood that Mr. Park prepared them, or provided them—I could not say.

The American National Bank has had all the books of the Commercial National. The books were moved down to the American National Bank—that was on Monday morning, that is, all of the active books and everything needed was carried down there, I understand—that is

my information, that they carried down there on Monday morning, and they have been in charge of them ever since that time. All of the books that were necessary in the business of the Commercial were carried down to the American, and have remained there ever since.

627 There was nothing said between Mr. Taylor and myself, either one or the other, in these transactions, as to the Commercial National Bank borrowing money from the American National Bank, or the American National Bank taking security from the Commercial National Bank.

With reference to the Commercial National Bank's assets and its business on August 3, 1914, everything was taken to the American National Bank, and the Commercial National Bank, as a bank, went out of business.

The Commercial National Bank did not transact any banking business after August 1, 1914, only in winding up the bank, as we had agreed with Mr. Taylor to do.

As an active bank, the Commercial National Bank did not transact any business then; we ceased to function, as a bank, after that time.

I went down to the American National Bank on an agreement with Mr. Taylor; I think I was there—the best I recall—about ten days. At the request of Mr. Taylor, I promised him. I was requested to hold the depositors of the Commercial for the American National Bank.

We agreed—of course the matter was discussed, of holding these depositors; and I told him I thought we could turn over practically all of the depositors to the American, which was the reason they made the deal, to get the business of the Commercial.

I can not state Mr. Taylor's exact words, but the substance was, that they made this deal for the purpose of getting the business, and the main business was the depositors, and he wanted me to do what I could to save the depositors for the American National. I told him I certainly would do that. And I went down there and staid out in the lobby of the bank, and met all of these men as they came in. Mr. Taylor and I agreed on this plan, that we would change those depositors
628 just as fast as they could be changed; and if a man preferred to go on for a little while making his deposits with the Commercial National to let him, but to get him to make the transfer as fast as we could. That is the reason I went there, and I think we succeeded in turning over to the American National Bank ninety or ninety-five per cent of our depositors. This was at Mr. Taylor's request; this was done for the American National Bank, saving these depositors.

Very frequently and in a majority of instances a depositor who is in business is also a borrower; almost entirely you might say.

For the purpose of holding to one bank the business of another, sometime is required for banking arrangements to be made with the new bank, to take the place of those had with the retiring bank; there are a good many of that kind of details. Here came in customers, for instance, who owed the bank some money, and who carried a fair deposit account. I took him in and introduced him to Mr. Taylor and Mr. Hillyer, and told him the situation; that here was a man that we usually extended a certain line, and who usually carried a certain deposit, and that I considered him a good man to have as a customer of the American National Bank; and they would talk the matter over with him, and in every single case, I think, that I made the recommendation they

took the depositor and then loaned him the money to pay out the indebtedness of the Commercial; and took the account in the American.

I had nothing whatever to do with the liquidation or the administration of the Commercial National Bank after August 3, 1914, except as I have stated. I had nothing at all to do with what was done with the records, or the handling of the moneys, or anything else.

629 I might have some time passed through the partitions where Mr. Lewis and Mr. DeBorde and these other men formerly employed by the Commercial National Bank were at work; but I staid outside all the time.

I did not do any work in there, or anywhere there in connection with any business of the Commercial National Bank.

Some reference has been made to partitions between the space occupied by these former employees of the Commercial National Bank and that occupied by the regular employees of the American National Bank; they just had cages that the young men occupied; practically all these young men, beginning around at Mr. Taylor's room where I think the American National Bank's savings department was—all the way around were these cages, practically down to the end.

I saw no difefrence whatever between the partitions which separated the former employees of the Commercial National Bank from the employees of the American National Bank and the partition that separated one employee of the American National Bank from another employee of the American National Bank. These young men, my recollection is, moved into cages formerly used by the young men of the American National Bank and they were put somewhere else.

I had no supervision or exercise of authority of any kind over anything that was done by the former employees of the Commercial National Bank at the banking house of the American National Bank on and after August 3, 1914. That was practically directly done by Mr. Hillyer. I was not consulted about it at all.

The only officers of the bank that were in there at all were Mr. Lewis and Mr. Souder; and Mr. Lewis was under the instructions of Mr. Taylor and Mr. Hillyer.

I had no supervision at all of Mr. E. N. Lewis while I was there, or of Mr. Souder.

Mr. J. J. Cobb did not do any work; I doubt whether he was in there; he just dropped in and spoke
630 to me once or twice; he did not stay around there at all.

In all of my dealings with the officers of the American National Bank the giving of notes by the Commercial National Bank to the American National Bank was not mentioned or contemplated.

I was not consulted about the methods of accounting —the records that were to be kept and the manner of keeping these records, in connection with the administration or the liquidation of the Commercial National Bank's affairs, or the handling of its assets and other affairs, on and after August 3, 1914. These matters were entirely in the hands of Mr. Hillyer and Mr. Taylor; they directed the policy and the methods.

We made no agreement that any balances at any given time, as between amounts paid by the American National Bank, to pay off liabilities of the Commercial National Bank, and amounts received by the American National Bank from realization on assets of the Commercial National Bank, should be carried on the books of the American National Bank as an overdraft of the Commercial National Bank. Or that any balances of that kind

should be included in loans and discounts made by the American National Bank.

I was not consulted at all, or asked to agree, that such balances should be carried on any records in the name of the Commercial National Bank as due to the American National Bank. Those arrangements were carried out by instructions of Mr. Hillyer and Mr. Taylor; I was not consulted at all about the arrangements.

Mr. E. N. Lewis was not authorized to perform any act for the Commercial National Bank on and after August 3, 1919, except under the directions of Mr. Hillyer and Mr. Taylor. He was expected, of course, to transfer all of the assets to the American National Bank, as cashier, and in some instances—of notes for instances—turn over to the American; and he was to transfer all balances, for instance, that we had had with various banks to them, at their request, and
631 any other assets that belonged to the Commercial.

I do not know any other way it could be done, except by sending to an out of town bank, a New York Bank or other bank, an exemplified copy of this contract, or by a check signed by Mr. Lewis, could the balances in out of town banks to the credit of the Commercial National Bank be turned over to the American National Bank. The simplest way was for Mr. Lewis to draw a check, and that would be collected, and immediately turned over to the American National Bank.

As to other acts of Mr. E. N. Lewis, except as provided for—for effectuating the transfer of these assets and the liquidation of the Commercial National Bank, under the direction of the American National Bank as liquidating agent, Mr. Lewis did not have any authority to act for the Commercial National Bank. He was to do

only what he was told to do, or requested to do by the American National Bank.

We had balances with correspondent banks. We had quite a lot of bills payable. They matured all along; in fact, I think the most of them matured approaching the fall.

I was not consulted by any reports made to the Comptroller by the American National Bank in the name of the Commercial National Bank. I did not see any such reports. I was never consulted about any such reports.

I recall a meeting of the Board of Directors of the Commercial National Bank on July 1, 1916, the date when the amount of the purchase price made by the American National Bank—when the sale of the Commercial National Bank building to the American National was confirmed.

My recollection is that Mr. Taylor asked me to come down to a meeting, and I came in, and there were only two or three of our directors present, and he told me; I asked him what he wanted, and he told
632 me he wanted—he wanted a resolution passed by our board agreeing to the sale, and he was very anxious to get it done. It seemed that quite a number of our men were out of town; and it took some little time to get them together. Finally, my recollection is, we managed to get a quorum, by getting Mr. Dure to take a car and go out after one of the directors; finally, we got just a quorum. Mr. Taylor wanted us to pass the resolution about the sale, which, after getting in there, we passed.

That meeting was held in the directors room back of the Continental Trust Company; I think the room used by the directors of the American National Bank and the Continental Trust Company.

My recollection is, that I was not at the second meeting of stockholders on September 30, 1914. I was out of the city, and, my recollection is, I was not at this second meeting.

I was at the meeting of August 12, 1914, the first meeting of the stockholders, to ratify the trade made; but not the other one.

I do not remember whether Mr. O. A. Park was at that meeting.

I do not recall in the meeting of August 12, 1914, that Mr. W. T. Anderson made any such statement that the American National Bank venture was backed by the liability of the stockholders of the Commercial National Bank; about all that I remember is that, before that meeting Mr. Lane brought me a copy of the resolutions that they wanted passed. In reading those resolutions I came across this clause as to the liability of stockholders. I objected immediately to it, and said there was no such agreement between Mr. Taylor and myself as to the liability of stockholders, that that never was contemplated, and that personally I was not willing to it. And, then Mr. Lane told me that he objected to it himself, but at the same time it did not amount to anything; that if we were liable by law,
633 we were liable, and if we were not, we were not; and for that reason they wanted it to go in.

I think Mr. Lane afterwards made that statement at the stockholders meeting.

None of these monthly statements of the condition of the account of the Commercial National Bank with the American National Bank, after August 1, 1914, which have been put in evidence, were submitted to me. I had no knowledge that they had ever been made or presented to any one. They were never persented to me.

Cross Examination.

I referred to a conference had with Mr. Taylor in the early Summer of 1914. I did not agree with Mr. Taylor at that time on any terms or conditions under which a possible consolidation of the two institutions might be made; that was purely a tentative proposition —just agreed to consolidate the banks. I agreed to that—in the early summer. I agreed that during the fall they would become consolidated; we did not go into any of the details at all.

I do not remember that there was a man named Brooks, who the latter part of July came to Macon and was making some rather unfortunate and injurious charges about the condition of the Commercial National Bank. There was a man who came here; I do not remember his name, or who he was; but he did come and claimed that he was unable to get a balance the Commercial National Bank owed him.

I do not remember exactly, as a result of this transaction, that I went to Mr. Taylor and told him that the Commercial National Bank needed some help or just exactly when the time was. I did go to Mr. Taylor and get him to loan Mr. Jelks some money; I do not remember just when. I also went to Mr. Taylor during that same period, before August 1, 1914, to get him to discount a considerable amount of paper for the Commercial; I do not remember the amount. I
634 do remember that he did discount some paper sometime in July, I think. He made a loan on the building; I do not remember the amount. I do not recall that it was $50,000.00.

It was a fact that the Commercial did need some money. That was not the real reason for hurrying up the proposition with Mr. Taylor.

I do not think that it was openly discussed that unless we had some money the bank could not do business, and would have to close on Saturday. Why, what happened—my recollection of the matter is—when I heard this rumor had gotten out that we needed money, I was afraid that would probably we used and that probably a run on the bank would be made, which would then be unfortunate for the bank; but outside of that one thing I did not think we would have any trouble to go through.

I do not remember that the matter was discussed on Thursday with Mr. Taylor, and as a result of that some heavy discounts were made in order to furnish the bank with cash for Friday's business. On Friday night a loan was made on the building.

I do not recall the amount of the loan made on the building. We did borrow money on the building because we might have needed the money to keep us from being embarrassed in case of a run on the bank.

I told Mr. Taylor of these rumors, and that we discussed the matter about that, and that in view of the fact that this rumor had gotten out, and, of course, might cause a run on the bank, we better take up the question of consolidation at once; that is the way it came about. It was not agreed between us that we could not continue longer borrowing to meet the demands after that day; it was not to meet their withdrawals to offset the possibility of a run on us on account of these rumors. I presume that it was very unusual for one bank in Macon to loan another bank money at this time. I had never known it to
635 be done before this, except in a case of emergency, of that sort, when they got in trouble.

I don't know that I ever heard of a bank mortgaging its bank building in order to get funds to meet withdraw-

als, and things like that, heretofore. I think I know of one instance—we loaned some money to the Exchange Bank at the time, to tide them over a run. We expected them to go on. The American and our bank and one other bank, because of the fact that there had been rumors circulated about the Exchange Bank, and we offered to make them a loan; we come together and made a loan, the conditions were the same—only in one thing, the danger of a run being made on the bank on account of rumors.

I do not know that the other banks of the Clearing House called a consultation to take steps as to the condition of the Commercial, and I do not know that the question was agitated as to whether these other banks would not help the Commercial National Bank; as to their promising to put up money to carry it through that is something I do not know a thing about —not in reference to the American or any other bank; I know about the Commercial; but I do not know anything about the other banks.

I do not know that before the deal was consummated Mr. Lewis the president of the Fourth National Bank, and Mr. Stetson, the president of the Citizens National Bank, and Mr. Hart, president of the Macon National Bank, were called in consultation for the Commercial and agreed to come to the assistance of the Commercial in case of a run on it—not a word said about it that I know of and to put up any additional funds needed there was not a word said to me about it.

I believe I stated that after the officers of the American National Bank went through the papers and receivables of the Commercial National Bank on Friday night that I asked Mr. Taylor if he was prepared to go on with the deal, if he was willing, and he said he was. I also asked him afterwards as to how he thought the

stockholders of the Commercial would come out. Mr. Cobb asked him at that time.

636 My recollection is that we three, Mr. Taylor, Mr. Cobb and myself, went home, and my recollection is that Mr. Cobb asked the question and Mr. Taylor made the reply as I stated. It was after that, that I had a talk with him, Mr. Taylor, after he had been off on his vacation, and had been away, I was talking with him in the American, I think, and he reiterated what he said. He said, 'I am sure the stockholders will be paid par.' After that, he said, when I was talking with him, 'Now, since Parker and Frank Mallary and Jelks are put in bankruptcy, and some of their firms,' he said, 'I am afraid they wont be, but I still feel sure they will get fifty cents on the dollar.'

I understood that he thought the assets of the Commercial would pan out. That is what he said after a hurried examination, that he thought the stockholders of the Commercial ought to get par for their stock, and he reiterated that after he had charge of the affairs for some weeks, to me. That was after troubles come on, and he thought they might not get more than fifty cents on the dollar. I believed the Commercial National Bank entirely solvent.

I told Mr. Taylor there were three things I wanted him to do, one was to pay off the depositors immediately on presentation, and he told me that would be necessary and that he would do that, and the next I wanted him to accommodate my customers, give them the same consideration that I had given them at the Commercial, and he told me that he would try to do that. Then I asked him to protect the stockholders of the Commercial National Bank. He said that was all right—but I want to say right here, that I do not mean to say

that Mr. Taylor agreed and entered into any agreement with me to see that these stockholders got par for their stock. I did not so understand it that he would see they got any other amount; but he did make that statement, just as he made these others, that he would
637 see that our stockholders were protected. There was not a word about any agreement, if it became necessary, to collect from the stockholders, the stockholders' liability, in all of this deal, that there would be any liability from the stockholders. And there never was any promise or agreement on the part of Mr. Taylor or anybody else representiing the bank that they would not resort to it, if it was necessary. I did not ask him for any such promise, I did not expect there to be any. As a matter of fact, I certainly did expect the stockholders to get par for their stock or very nearly. In all my talks or trade, with Mr. Taylor, it was never contemplated that there would be any loss to the stockholders, and therefore, we never asked them to make such an agreement and he never made any statement at any time to indicate that he might not do it if it became necessary. We never thought it was necessary, nobody thought so. It is my understanding that Mr. Lane, who was general counsel for the Commercial National Bank, brought the resolution of August 1, 1914, from you, and he presented it. I cannot say whether he prepared it, or Mr. Park; my idea, from my talk with Mr. Lane, was, that Mr. Park prepared them. Mr. Lane was my counsel and represented me, and brought the resolution and presented it. He had three thousand dollars of stock in the Commercial National Bank, I think. After the contract was agreed on, as set forth in the resolutions, the books, papers and records of the Commercial National Bank were brought down to the American National Bank by Mr. Lewis and

Mr. Souder, the cashier and assistant cashier, respectively, the way I understood it always was this; all the young men took these books down there and turned them over to the American National Bank; the American National Bank was in charge, and directed these young men where to go and what to do; and they handled all these affairs under the direction of the American National Bank after that. There were several cages set apart in the American Bank for the Commercial National Bank. One of these windows was the paying teller, and in another one the receiving teller, and in another the collection teller, and our own bookkeeper at work on the books, regarding Mr. Lewis having a desk given him back in that section, and ran along for several days, possibly running into several weeks,
638 in that way, and during the time in which they were in charge of these books, and the Commercial affairs, will say it is not my understanding that they were in charge at all; as far as the general directions and conduct of it was concerned, it was absolutely directed by Mr. Taylor; as far as simply the manipulation of the books, the methods were dictated by Mr. Hillyer. The reason I know, I went down there and tried to get Mr. Lewis to find something one time, and he told me certain instructions he had by Mr. Hillyer, and that nothing was done except under his direction. Under that direction these young men conducted the affairs of the bank, in winding it up; it was simply transferred to the American National. For instance when we went down there we had two bookkeepers—I think ledgers—My son had one I think—I don't know which one— and another of the young men had another. Now as these depositors were transferred to the American National Bank, their deposits were balanced off, and soon they got rid of one book, and one of the

young men took the whole thing—and it was just wound up in that way; that was all we had to do with it. Mr. Lewis, the cashier, and Mr. Souder, the assistant cashier, and my several tellers and bookkeepers were all there, in a part of the American National Bank building, under the absolute control of the American National Bank, and were there and did the physical work. The depositors transferred their balances, and a check was drawn on the Commercial, and if the depositor wanted to he was allowed as I stated, directed by Mr. Taylor—these depositors were allowed a discretion. In other words, if a man wanted to continue for a while making his deposits in the Commercial—if he was not ready to decide what bank he would change his account to—to humor him he was allowed to do that; but we endeavored to get him to transfer his account as quick as we could. That was all done to try to save the depositors for the American, and not for any interest that the Commercial had in it. There was no doubt that the American National Bank wanted the deposits. If a depositor wanted to continue his account there he could do so, temporarily just as I stated—more to humor them.

639 In other words, here is the plan, as I understand Mr. Taylor. A depositor could draw his check on the Commercial National Bank, and have it O. K'd. by a teller of the Commercial, and then deposit that check where he so pleased, if he had the money on deposit. Of course any depositor could draw his money out when he got ready. If you went down there, you were not obliged to deposit a check which you drew on the Commercial with the American National Bank. A good many checks are actually paid on money over the counter of the Commercial National Bank. I am not sure whether a considerable number of them were put in the Continental Trust Company. They got the Com-

mercial accounts. Regarding the savings accounts transferred to the Continental Trust Company instead of the American National Bank, I do not think so. A few of the customers, I think, opened accounts with the Fourth National Bank, the Macon National and the Citizens National Bank instead of the American National Bank, but it was for that very reason, for fear that they might go, that Mr. Taylor asked me to humor them. We could not transfer any of those accounts to the American, so the customers themselves had to transfer their own balances, as we could not do it, having just the right to give them a man's account, is a new one on me. I thought a man had to handle his own account I don't know about us paying off the depositors for a period of six months, four or five months. I don't think so. I was under the impression that majority of our depositors—probably all except those who had money borrowed—were transferred pretty quickly. I think I got most of them before I left there; I was there about ten days; I wouldn't say positively, but that is my recollection, there might have been a few left over after that ten days, but I think the bulk of them had been transferred except the ones that had money borrowed. The Commercial National Bank was furnished the money by the American National Bank to pay off its depositors when they were paid cash over the counter. I don't know what we gave the American to evidence the amount of money we got from them, as I did not handle the details of that. I don't know whether notes were given, or whether checks were drawn and charged to our account. It was done just as the American National Bank told them to do it.

While the notes due the Commercial National
640 Bank were going on, I think we had a note teller there; and when a man would come in and

pay a paper to him he would take it, and report it to the American National Bank, but I don't know whether he would deposit it with the American National Bank or not, he made his reports the American National Bank, but I am not very familiar with the details of handling it. I could not say whether Mr. Lewis pushed a good many of these customers vigorously to get these amounts in or not, I naturally suppose that he wanted to collect it in; that the American National Bank wanted to collect it in and that Mr. Lewis did whatever they wanted done; they had the right to do it. I have no recollection that the Commercial National Bank went to the Clearing House and regularly cleared just like it had done previously to that time. I should think probably before they got the thing to running, under way, that it is very probable that that was the most convenient way to settle checks deposited with us—it would be done that way—but I think after probably the first day—I may be wrong—that the American National did it itself—that the checks were turned over to the American, and they made the clearances. I have an indistinct recollection that we made the clearances one day; I can't say whether it was one or longer than that though. I can't remember an instance when checks drawn by customers of the Commercial National Bank, and O. K'd by the teller of the Commercial National Bank, were presented to other banks for payment. It was very likely done by customers of the Commercial. Just as I said the American National Bank agreed to furnish the money to pay our depositors; and I suppose they arranged that; that was the agreement, but I don't know as a matter of fact, how the account between the American National Bank and the Commercial National Bank was kept. I don't know whether the Commercial National Bank drew checks regularly on the American

to cover these accounts. I know the American National Bank agreed to furnish the money but the method they pursued in doing this I do not know. I just simply know that it was done like the American National Bank wanted it done, but I don't know how that was.

641 Mr. Lewis, the cashier of the Commercial National Bank, carried out the instructions of Mr. Hillyer and Mr. Taylor, in regard to the matter, and so far as our part was concerned. Mr. Lewis did not represent the Commercial National Bank in making the arrangements as to how the accounts should be carried, these arrangements were made arbitrarily by the American National, that is my understanding, and I know that the American dictated the policy pursued by the Commercial National Bank. I got that from conversations with Mr. Hillyer and Mr. Taylor and Mr. Lewis. Mr. Lewis told me that he did nothing unless he was directed by these two men, and I saw him carry out their instructions. We had that understanding when we went down there, that he was not acting on his own responsibility. I thought you knew that when the American National Bank took charge of those men, and they were directly under their contract, and they were absolutely under the control of Mr. Hillyer and Mr. Taylor. I am surprised, I thought everybody knew that; there was absolutely no trobule about that at all; I did not know that was disputed, that is new to me. We had some balance with other banks, and quite a number of correspondents, I don't remember how many. I understood that these balances were transferred, I do not know when or how they were transferred. I could not give the day they were transferred. I was told that they were transferred immediately or very quickly, and transferred by instructions from the American National Bank, and by check drawn by Mr. Lewis; I can't say

as to details. I know that the account with the Coal & Iron Bank was carried on for several months before it was transferred. I know that we had some discounts with the Coal & Iron bank, and we owed the National City Bank quite an amount of money, and we had a deposit account with them, I don't know that the balance with the National City Bank was carried for several months. It is very likely that on account of the amount of money we owed them that those men would be willing to carry the balance with them. I am pretty sure that you will find this to be true, we had no money deposited with them individually—that whatever balance we had there was simply there when we were down there—

642 there is nothing strange about the notes being paid in part by checks drawn by the Commercial National Bank, by Mr. Lewis, the cashier, on these banks in New York. I could not say that I know that. I knew, as I told you before, so far as the details were concerned, my responsibility ceased when they went down there, and Mr. Taylor and Mr. Hillyer took charge, and all the directions of any kind given Mr. Lewis was by them and not by me; therefore, I know nothing about those details. I just know the custom, and what would be probably done in the case, like that. I did not know that some notes that had been given by the Commercial National Bank to non-resident banks were renewed by the Commercial National Bank, but if they could do it, I would not be surprised. The American National Bank needed money to carry on the deal, and if they could get the Commercial National Bank to extend a note— in that way—to keep from having to pay out the money themselves, it would be natural; but that was by direction of the American National Bank if it was done. I did not know that in several instances, collateral of the Commercial National Bank was substituted for

other collateral, it would be natural for them to do it. I will say yes it would be perfectly reasonable proposition for them to handle it in this way, with this explanation; To handle a deal like this, this deal, the American National Bank needed a whole lot of money to pay off all the depositors and if instead of the American borrowing the money the American could use the Commercial National Bank to extend some of this paper instead of paying it off—the American National Bank was under the obligation you see to pay it when it was due—instead of taking this money out of their bank and paying it, if they could use this bank to the extent of having the Commercial National extend them, and have them take some of the paper that the Commercial National Bank had as security, that would be natural; but that fact that it was ever done, I do not know whether it was or not. We rented the offices in the Commercial National Bank Building up to October, and of course they carried them out I didn't continue to use them after that, our time expired and the American National Bank took charge, but I presume they, the Commercial National Bank, was given credit for it all; they still owned the
643 building until the American National Bank took it over, but I do not know that. I do not know how the expenses of the Commercial Bank building were paid, I presume they were all paid by checks drawn by the Commercial on the Commercial National Bank itself. The agreement we had with Mr. Taylor was that these expenses were to be paid by the American. What I mean is this—I can tell you my individual account part in it—I think it was agreed that my salary should run for two weeks a certain length of time—that was agreed on; and I got the check from Mr. Lewis. By instructions from the American National

Bank he drew the check, but it came through the agreement with the American. Mr. Lewis just simply did the handling and signing of the check, and it was drawn on the Commercial National Bank, and I knew it was the agreement that the American National Bank was to furnish the money to pay it, I presume they did. I do not know what Mr. Lewis gave to the American National Bank as evidence that they had advanced that money. A meeting of the stockholders was held I think, August 12th, 1914, although I am not sure of the date, and I was present at the first meeting, which I think was the above date. At that meeting the contract that you and Mr. Lane got up, was submitted, but I don't remember signing the contract. I may have done it. That is the one that I objected to signing, I remember; that (referring to contract) that may have been the one I objected to signing on account of the stockholders liability; I don't know whether I signed it or not, but if you say I signed it, it is all right. If it is signed the Commercial National Bank by me as President, it is very probably that I did. It was not a contract that was entered into by the directors between the two banks, I was there, and some contract was read, I presume that is the one. Regarding the following resolution being passed; 'That the contract between this association and the American National Bank of Macon, signed by their respective officers, and dated August 11, 1914, said contract having been made pursuant to the resolution of the Board of Directors aforesaid be and the same is hereby in all respects ratified and approved. I don't recall that resolution, I know that we adopted a resolution, but I do not remember the words. I think Mr. Lane said before the discussion of his motion that he thought he ought to read the contract to the shareholders entered into

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between Commercial National Bank and the American National, he read the contract. The part of the contract that contained the provision that all parties definitely agreed and understood that neither these resolutions of the boards of directors nor this contract shall relieve the shareholders of the Commercial National Bank from their legal liability as shareholders, to respond, in case it may be necessary to have recoruse upon them for any deficiency in assets, any difference between assets and liabilities, is the part that I objected to. It was later explained by Mr. Lane that it did not make us any more liable under the law, and therefore to let it go in on that basis; it was on that basis that I agreed to it at all. I presume I signed the contract, the shareholders ratified it, whatever it was. I remember the contract was read by Mr. Lane. I do not remember that Mr. W. T. Anderson made a statement at that same meeting. I have no recollection that he made any written statement, or neither do I remember Mr. Anderson making a statement stating about how the paper was classified by Mr. Taylor and the other officers of the American National Bank; or how much they classified as number one or prime paper, or how much as number 2 or how much as number 3, and that Mr. Anderson wound up his statement by saying "But the assets over liabilities figured, according to my recollection, about $443,000.00 and that was the margin on which they took it, backed up by the additional liability of the stockholders." I have no recollection whatever of that I think I would have objected to it because there was absolutely no such idea as that with me or anybody else when this thing was entered into, and I would have objected to it if he made it, but I do not remember him making any statement, and certainly

not that one. That is the minute book of the Commercial National Bank, but I do not recognize that as the signature of Mr. George S. Derry, he has got nothing to do with the Commercial National Bank. I do not remember him being elected as secretary of the meeting. He may have been.

but he was neither stockholder or a director
645 of the Commercial National Bank. I do not recall that he acted as Secretary of that meeting, he may have been. I notice that those minutes are not signed by me as president or by anybody else; it looks like they ought to have been signed by me. I was not chairman of the meeting, but I think Mr. L. O. Benton was chairman, but I do not know that Mr. G. S. Derry was secretary. When I rather objected to that paragraph in the contract and would not sign it, Mr. Lane stated that he objected to it also, and as I understood it, that you, Mr. Park, and Mr. Jones wanted it in there, one of you, I don't remember which one of you it was that wanted it in, it is my recollection, that I stated that it was not in our agreement, and he said so, that he was there that night, and it was not so undersood, but he allowed it to go on the idea I just mentioned, because if they were legally bound, they were anyway, and if they were not, they were not. It is my understanding that he said that the representatives of the American National Bank insisted that it be put in the contract, or that either you or Jones insisted on it, and I rather got the impression that you and he agreed on that statement of facts,—that is, that it wouldn't matter whether it was in there or not; that it would amount to the same thing, and we had just as well let it go in; that was my idea—or the way I understood it. You state that the contract was signed on August 11th, even then I objected to it, our bank

was out of existence then; we could not rescind any trade. They had taken charge somewhere about that time, within a week after they took it over, the American National Bank was insisting that this liability clause be left out in the contract, I went down there on the third; this was the 11th three from eleven leaves eight days, which is right, and I understand you said you could not accept it, in the way Mr. Lane mentioned; that was my understanding. I did not prepare the reports to the Comptroller before the transaction with the American but they were submitted to me or to Mr. Cobb, submitted sometimes to one and sometimes to the other. The monthly reconcilement sheet with the correspondent banks, with which the Commercial National Bank had accounts was never submitted to me at any time while I was president, as a matter of fact I did not
646 have anything to do with the details of the operation of the bank at any time. The keeping of their accounts, the detail of handling the business all the way through, was under the direction principally of Mr. Lewis, under the general control of Mr. Cobb. After the transaction Mr. Cobb did not take any very active part in the affairs of the Commercial National Bank at all; it was done by Mr. Lewis under the direction of Mr. Hillyer and Mr. Taylor. I knew of the transaction with Mr. W. E. Small with reference to the settlement of his account by taking over some property on College Street was done, but I did not know at the time, I was told afterwards, but I was not consulted about the transaction. I do not know that the Commercial National Bank gave Mr. Small credit for $12,500.00 for that property, and that the American National Bank only gave the Commercial credit for ten thousand for it immediately. After the meeting of the stockholders of August the 12th, 1914, I went to Alaska,

I don't remember, but to my recollection, I was gone at least six weeks; somewhere about that, it may have been a little longer. When I came back the liquidation of the Commercial National had progressed so far that my services were not required in connection with it, except occasionally when I came back. Mr. Lewis was not at the American National Bank looking after affairs of the Commmercial National Bank, but I think Mr. DeBorde was there. Mr. Lewis had gone, and I think Mr. Souder had left before Mr. Lewis, gradually as they could eliminate them they did. I could not say that all of them were there until after the meeting of August the 12th, 1914, or not, I don't know whether Mr. Souder left before that time or not, I couldn't recall any who did. After the meeting of August the 12th, I think the stockholders' committee was elected, and I think Mr. Anderson, Mr. Benton, Mr. Lewis, John F. Lewis of Valdosta I mean, and I believe Mr. Dure were the Committee. The committee was appointed by the stockholders at the request of Mr. Taylor, or that is my recollection, to look after the interest of the stockholders, and the Commercial's affairs. I understand that the only thing that was passed on by that committee was settlements made, such as Small's, and such other settlements as were made, so far as managing the affairs of the bank, they had nothing to do with. I
647 was not at the committee meeting, and I only got what they did from Mr. Taylor, who used to tell me what they did. Regarding the letter dated July 1st, 1916, of which that is a carbon, I really have no recollection of ever getting the letter; I may have; I have absolutely no recollection of it. The only recollection I have is I was asked by Mr. Taylor to come down to the Directors' meeting to ratify the sale. I remember

that, and I have no copy of the correspondence, and could not find the letter. I remember we had a meeting down at the American National Bank at the time we approved the American National Bank taking the Commercial Building at a certain figure; whether it was right after the date of that letter, I could not say, but I remember that it did take place. I do not remember seeing this advertisement in regard to the sale of the bank, we had a meeting at the time the sale was approved, but I do not remember that it was on July 1st, 1916, as I do not remember the date. I do not recall the resolution as that which was passed at the meeting referred to, I do not remember it, and I do not remember the letter, but I know we did first have a meeting as I stated, and finally got a quorum to approve the resolution presented by Mr. Taylor, to sell the building, the approval of that; any further than that I do not remember. I did not attend the meeting of September 30th, 1919, as I was out of town at that time.

Re-Direct Examination.

Upon the assumption that it is true as stated in the third paragraph of the petition, the original petition in this case, that the American National Bank had transferred to it, on August 1, 1914, all of the assets of the Commercial National Bank, including its cash on hand, bills receivable, stocks, bonds, securities banking house and other real estate, and assuming that it is true, as alleged in the fourth paragraph of the petition, that pursuant to an agreement between the officials of the two banks, the American National Bank took charge of all these assets so transferred to it by the Commercial National Bank on the 3rd of August, 1914, and from

and after that date the American National Bank
648 paid, in due course and as called upon all depositors of the said Commercial National Bank, its bills receivable and other liabilities, the officers of the Commercial National Bank, as such, or any employee of the Commercial National Bank, as such, had no function in connection with these assets or these liabilities. And assuming it is true, as advertised by the American National Bank, on August 2, 1914, and on August 3, 1914, that, in order to better serve the business interests and people of this community and section, the officers of the American National Bank are pleased to announce a consolidation of the business of the American National Bank and the Commercial National Bank of this City,—had been effected,—we ceased to function absolutely as a bank, when it went to the American National Bank, and the officers or the employees formerly connected with the Commercial National Bank, and as representing the Commercial National Bank had no function at all. And assuming it is true as advertised by the Commercial National Bank on August 2, 1914, and on August 3, 1914, that a merger had been effected with the American National Bank, the officers of the Commercial National Bank, as such, did not have any function or office in regard to the business or assets that were transferred to the American National Bank. Assuming that it is true, as stated in the letter of Mr. E. O. Scott, the cashier of the American National Bank, under date of August the 1st, 1914, the American National Bank had absorbed the Commercial National Bank of Macon, —the officers of the Commercial National Bank, and the former employee of the Commercial National Bank, as such, had no office or function or had nothing to do with the assets or liabilities of the Commercial National Bank. The Paying Teller and receiving teller

and cashier and so forth, were formerly under us, but after they went down to the American National Bank they were not acting as before with the Commercial National Bank. The conference at which there was an examination of the assets of the Commercial National Bank on Friday night, July 31st, 1914, lasted
649 all night, until day light, and began right after supper. It is true that that was Mr. Taylor's plan, in order to insure his getting a majority of these depositors. It is true that in the printed advertisements of the American National Bank that bank requested that until the change of deposits was made checks be drawn in that manner. It would not be tactful at all, that a bank would have a right to transfer by force and arms the deposits of various persons from one bank to another; from a banker's standpoint and from the standpoint of getting the best results, even if legal, it would be rather irritating I should say. In view of the obligation of the American National Bank, in the contract, to pay the expenses of this liquidation of the affairs of the Commercial National Bank and of their right to deduct those expenses before any overplus would be payable to the shareholders of the Commercial National Bank, the payment that was made to me for two weeks' time was in connection with this process of liquidation or administration by the American National Bank. When I saw this contract as drafted, the Commercial National Bank had gone out of business, and the American National Bank had the Commercial National Bank at the time. The reconcilement sheets of the Commercial National Bank were not submitted to me as president of the Commercial National Bank while the Commercial was engaged in the banking business; they were submitted to the cashier always, and the paying teller has nothing to do with them at all. Prior to August

the 3rd, 1914, I was president of the Commercial National Bank, and was down there, but Mr. Cobb was vice-president, and was the main man down there that managed the bank, I was there and actively connected with the bank.

ReCross Examination.

There have been two or three other banks whose business were transferred to other banks in Macon within the last few years. I do not know as a matter of fact that the accounts of the Citizens National Bank were on the very day all transferred to the Fourth National Bank, or that the same thing was done when the American National Bank transferred its business to the Citizens & Southern, and taken off one book and put on the books of the other bank without consulting the depositors. I do not know that the accounts of the Continental Trust Company were all transferred when they sold their business to the Fourth National Bank. I was giving simply my information, without any knowledge of what was customary in other cases.

L. S. DURE testifies:

Direct Examination.

I was stockholder and director of the Commercial National, and chairman of the finance committee, prior to August the 1st, 1914. I was not present at the meeting of the representatives of the Commercial National Bank and the American National Bank on the night of July 31st, 1914, when an examination was made of

the assets of the Commercial National. I attended the stockholders meeting of the Commercial National Bank of August 12th, 1914. Regarding whether I heard an extract from the minutes of that meeting purporting to quote a statement from Mr. W. T. Anderson, in which Mr. Anderson is asserted to have said that the American National Bank venture was backed by the assets of the Commercial National Bank, and by the stockholders' liability, will say he made some statement there, I do not recall his having made a statement to that effect. The contract, as I recall it, was presented by Mr. Lane, and when it came to that section of the contract various parties objected to it; and Mr. Lane gave the explanation that he had tried to have it left out. He stated I think that he had a conference with Mr. Park, and I think that they prepared it together; and that they had agreed that if the stockholders were legally liable they were liable, whether that was in there or not; that was the explanation made by him at that meeting. Regarding what is alleged in the amendment to this petition that it was agreed by the officers and the finance committee of the Commercial National Bank, with the officers of the American National Bank, that any balance or discrepancies between the payments by the American National Bank on the liabilities of the Commercial National Bank and the realization by the American National Bank on the assets of the Commercial National Bank, should be carried by the American National Bank. as shown on the records of the

651 two banks, as an overdraft of the Commercial National Bank with the American National Bank, it is not true; to begin with, the finance committee ceased to exist; we had what is known as a stockholders' committee, but none of the matters of that character were submitted to us, there never was such an

agreement asked for or obtained from the finance committee. No agreement was made at all that any overdraft shown by the method of accounting of the American National Bank, either on its own books, or through liquidating the affairs of the Commercial on the books of the Commercial should be secured by assets of the Commercial, none of these matters came before us at all. I don't know that I had any knowledge or information, as a director of the Commercial National Bank, with reference to the methods of accounting or handling this business, after it was carried around to the banking house of the American National Bank on August 3rd, 1914. I never paid any attention to that feature of it, I have since learned how it was conducted. I had no knowledge as to the details of it, while it was going on. I read the testimony as to how the records which had been used by the Commercial National Bank, as a bank, were continued by the liquidating of its affairs, at the American National Bank's banking house, after August the 3rd, 1914. I am fairly familiar with the banking business and accounting. I have twenty or twenty-five years experience with banks and banking business. In my opinion as to whether or not, if there was a contract for the sale of the assets of the Commercial National Bank to the American National Bank, with an obligation on the part of the American National Bank the account to the shareholders of the Commercial National Bank for any overplus of realization on assets over payment of liabilities, after deducting the expenses of the administration or liquidation, it would have been necessary to have kept these accounts as they were kept, or to have adopted some system of accounting that was the equivalent of it, I don't know of any more simple plan than the one that was adopted in the view of that sort of trade. The Commercial National Bank,

as a bank, did not transact any business at all after August the 1st, 1914. Mr. J. J. Cobb died within the last twelve or fifteen months, he died before you began taking testimony in this case, the death of Mr. E. N. Lewis occurred prior to the time you began taking testimony in this case; and the same is true regarding Mr. W. A. Lane, he died previously to the time you began taking the testimony of this case. None of the officers of the Commercial National Bank or the Board of Directors of the Commercial National Bank, or the elected officers of the bank, undertook to exercise any control over the work of Mr. E. N. Lewis after the affairs of the Commercial National Bank were moved around to the banking house of the American National Bank, so far as I know. I don't think from the time the American National took over the Commercial that I had a single conversation with Mr. Mallary—I don't believe one time until the last few days. I don't think I had any with Mr. Cobb, and I don't know whether I did or not with Mr. Lewis; possibly I had one or two with Mr. Lewis. In the transactions that lead up to and eventuated in the transfer of the Commercial National Bank to the American National Bank, and the taking over of the Commercial National Bank by the American National Bank, and whether anything was said or done indicating that the Commercial National Bank was borrowing money from the American National Bank, in connection with this contract, will say that possibly two or three weeks before August the 1st, the Commercial National either borrowed or made a sale of some of its paper to the American National Bank; and then a day or two before August the 1st, we made a loan from it of $50,000 on the building, and at these times definite amounts of money were borrowed, and also definite collateral put

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up for them, one was the sale of some paper that the Commercial already owned. Mr. Hillyer, Sr., was in charge, primarily of the collection of the Commercial National Bank's paper after it was transferred to the American National Bank. Mr. Hansell Hillyer was specially employed a while by the American National Bank to press these collections, but he did not have any connection with the Commercial National Bank, that I know of. At this stockholders' meeting at which the contract was ratified, my recollec-
653 tion is that Mr. Lane made the statement—in the same statement—that Mr. Taylor desired such a committee to be appointed, and I was appointed as one of that committee. My understanding was, that the duties of that committee, defined at that meeting of the stockholders, were to advise and consult with the American National Bank officials and conserve the interest of the stockholders. The stockholders of the Commercial National Bank hoped there would be a dividend on their holdings. I understood under the contract that the overplus was to be paid the shareholders, the contract provided for that. In the work of that committee, I worked with the American National Bank officials; the American National Bank appointed a similar committee and it was supposed that our meetings would be joint meetings, and they were for a time. Practically all of the time one of their committee would meet with us; Mr. Park I remember was on the committee from the American National Bank directors. I, myself, did not feel that we had any authority in connection with these matters. We had nothing on our initiative; we were simply called in a consulting and advisory capacity, and assisted in handling quite a number of matters, and the various matters that we acted on were always brought before us at these meetings by Mr. Hill-

yer or Mr. Taylor, Mr. Taylor, principally; though I was the most active member of the committee probably, and there were some matters that I personally went out and took rather an active interest in getting shaped up; there was quite a number of them that I did. I know that I never considered that we had any authority with reference to the handling of these items, as a matter of fact, I think I remarked that at more than one meeting, that the American National Bank would do as they pleased about these matters anyhow. Mr. Anderson and myself both made that statement several times at the joint meetings

Cross Examination.

654 About six or seven weeks before the trade between the American National Bank and the Commercial National Bank was made, there was a national bank examiner, named Higgins that created quite a stir in Commercial National Bank affairs, and that Mr. Higgins insisted that the affairs of the Commercial Bank be practically dominated by the finance committee, of which Mr. W. T. Anderson and myself were to be the controlling spirits. We were active, but I would not say that Mr. Anderson and myself, controlled the policy of the Commercial, rather than the officers of the Bank; we endeavored to actively supervise everything; we were not known to the public in that capacity. We were the financial arbiters of the bank's destiny, we were there every day trying to shape up things, and when it came to making the trade with the American National Bank, Mr. Anderson and myself probably had a great deal to do with everything about that trade. Probably a month before August the 1st Mr. Anderson and myself not once, but probably two or three times,

suggested the advisability of having some institution take over the Commercial National Bank; and Mr. Mallary always stated that he had taken the matter up with Mr. Taylor some months prior, and he also had the matter in mind, but thought we had better defer it until late Fall. There was an official of that bank, the Georgia Savings & Trust Company, came down and complained of not being able to get some checks paid, but I would not say that brought it about. That was two or three weeks prior to August 1st; but he did come down there some weeks before. For some little time before the contract was actually entered into the Commercial National Bank was put to it have sufficient cash to keep up with its affairs, and Mr. Anderson and myself thought the bank had overloaned, and as consequence had overborrowed. We felt that we ought to have more cash to take care of other matters, and that was the occasion of arranging this loan for Mr. Jelks, and was also the occasion of the Commercial National Bank discounting some of its paper with the American National, and is true of any money we got, and of the money that was borrowed on the Commercial National Bank building. There was probably two things that brought the thing to a head quickly. On Thursday prior to August 1st—the first time I was getting fearful of the public, we had heard one or two rumors
655 that we knew were very damaging to the bank. On Thursday night I was approached by a gentleman who told me of these rumors, and it alarmed me to such an extent that I saw Mr. Anderson that night; I staid with him all the night; and we resolved that the time had some to have some institution take the bank over. We were fearful if these rumors continued to spread that the bank could not stand any heavy withdrawals, and that precipitated a conference

of officials with the American National Bank Friday morning and that night. I was not present that night, the only time I was not present. I did not see Mr. Taylor, and I do not think Mr. Anderson did; he may have approached Mr. Taylor in the morning early. My recollection is that Mr. Mallary and Mr. Cobb did, the other reason was that the war was imminent at that time; which was the other thing, I think war was declared August the 1st, or about that time. The declaring of war played havoc with finances all over the country. We were fearful of these rumors, if they continued to spread, and the announcement of war always has the effect of frightening the money market, and we thought it would be more difficult to arrange matters. I was not present that Friday night, when the officers of the two banks undertook to make an examination of the Commercial National's assets. I did not know that the other banks composing the clearing house were called into consultation about the matter. I was chairman of the finance committee at the time of the transfer and not Mr. Anderson. I was chairman all the way through. I know that on the morning of August the 3rd, the Commercial National Bank opened up in the office of the American National Bank, and some of the employees were retained; possibly all of them; some of them I know. I did not know how the method of transacting the business between the two banks, as testified to by Mr. Souder and Mr. Scott, was handled, I did not bother my mind about that feature of it at all, although I am not prepared to dispute at all any statements that were made about it. At the meeting of the stockholders of August the 12th, 1914, there was some discussion of the clause in the contract that stated, in substance, that the contract could not in any way interfere with the liability of the stockholders to respond,

in the event it became necessary to call on
656 them, it was discussed by probably half dozen of the stockholders, and the statement was made by Mr. Lane that the American National insisted on that being in the contract. He said the contract had been drawn—as I recall it that you prepared the contract—and that he objected to that clause going in there. I won't include you in this Mr. Park, I won't make this statement positively—but my recollection is he said that you all agreed on that, in the opinion that whether it was in there or not, if they were liable they were liable, whether that was in there or not; I won't state positively that he said that was your (Mr. Park's) view, but that is my recollection, at least it was his view. The contract was ratified in full, with the knowledge that this clause was in there, in that meeting. Mr. Anderson and myself both made statements at that meeting. The stockholders were apprised by Mr. Anderson that he and I had been more or less active up there for several weeks previous to this. He made a general statement of what we had been doing; he made a much longer statement—is my recollection—that is recorded there; he went into detail as to our activity there. I have read that statement. My recollection is that Mr. Anderson made a more extended statement; he stated a great deal about our connection with it, which that statement does not mention at all. I am not prepared to say that substantially, that is correct, I do recall his making the statement, I do not know what the statement was—I remember he made the statement about the fact that we were active up here, and mentioning some figures; but I do not recall anything in his statement about any liability. He may have made some statement in connection with Mr. Lane's explanation of that clause; I can't quote his exact language, but I could not state

that Mr. Anderson did not make the statement, as I do not recall it. I do not recall a resolution being passed at that meeting, placing the bank in voluntary liquidation, I only recall that the contract was submitted and we ratified it. If the minutes showed that separate resolutions were passed placing the bank in liquidation, I would say yes, but I do not recall it. I recall a stockholders committee was appointed under one resolution, but I don't recall just when. The resolution of "Whereas the stockholders have passed a resolution appointing the American National Bank
657 of Macon, Georgia, liquidating agent of this bank as requested by the Comptroller of the United States.

Now, therefore, be it resolved that this meeting appoint L. O. Benton, J. F. Lewis, Leon S. Dure, W. T. Anderson and John J. McKay, a special committee of five, who shall serve as a special stockholders' committee, representing the stockholders, whose duty it shall be to serve with the board of directors, and who shall be consulted before any final action is taken by the board of directors on all matters relating to the said liquidation by the said American National Bank. Compensation to be later determined by the board of directors." That was probably the resolution by Mr. Robertson. I attended the next stockholders' meeting of September 30th, 1914, and recall that their action of the previous meeting on this contract was again ratified by these stockholders, or in other words, my recollection is that this later meeting was called because they had to give thirty days' notice to the stockholders instead of ten days; and we took the same action we had previously taken. We passed whatever resolution that was submitted, I do not recall the resolution placing the Commercial National Bank in voluntary liquidation, or I

do not recall that there was two resolutions passed, probably so. I recall that there was some discussion of the compensation to be received by the stockholders' committee, and a special committee was appointed to fix the compensation of the committee of five, but I do not know whether it was the first meeting or the last, I re-recall the resolution, though. I acted as chairman of the stockholders' committee, and the committee held joint meetings most of the time with the American, but the full committee of the American was not with us all of the time; there was generally one or two of them at our meeting. I have examined that book, which purports to be the minutes of the stockholders' committee of the Commercial National Bank; it is the book and represents the action taken by that committee at these various meetings, Mr. McKay was secretary and kept the minutes, whenever he was present, and if he was not present I made the memorandum and sent it to him. After examining the bundle of papers
658 marked '46', the stenographer's notation, and that signature of 'Leon S. Dure' is signed by me. Those papers purporting to be the minutes or contain the minutes of the various meetings of the stockholders committee at which I acted as secretary, or those with my signature or the memorandum that went with the letters I wrote, accurately set forth what was done at the stockholders' meeting. Some of this bundle are in the handwriting of Mr. McKay. Those signed by me and those accompanying letters with my signature are correct, as they represent what the committee did at that meeting, and is a memoranda of the action taken. The book introduced was correct minutes of the stockholders' meeting. I did not serve as a member of a committee of creditors that investigated the Mallary Mill Supply Company nor any of the other corporations

shortly after the committee was appointed, and I never was on any of those committees. I only represented the Commercial National Bank on this one committee, I did not represent them on the committee when the Mallary matters were up for discussion. There was not a representative of each one of the banks who was a creditor of the Mallary corporation, I never was in any joint committee, in the question of these matters, but I was on the committee on the question whether additional funds should be advanced, those matters came before our committee. I never attended any conference with any other banks regarding these companies at the time Mr. Mallary's stock in some of these corporations was transferred and a portion of it transferred to the Commercial National Bank, I don't think so, because I know what my position was about taking over the stock. You mean the Mallary, Taylor Iron Works. My view on that was, which is expressed in the minutes, to take them at their full value to be credited on their debts, nor to credit the stock at par value, but full value. I represented the Commercial National Bank in the negotiations between that bank and the Central Trust Company and the Continental Trust Company and T. C. Parker, in which there was an adjustment of the security held by the Commercial and the Central Trust Company, I contended that in the meeting, when the American asked me, or any member of the Committee,

659 but I remember this particular contract between these banks. I would not say that I actively assisted in working out the plan, which was finally reduced to that contract, but I think this, I think this was worked out by your firm probably; I do not know the details. I think the matter did come before the stockholders' committee; I know that; I know I attended what you had reference to, about the stock-

holders' committee. I would not say that I actively assisted in negotiating, and working out the various securities,—wherein the various securities of the Beechwood Farms, and the other papers set out in there were divided between the Commercial National Bank, the Central Trust Company, and so on, beyond the fact that it was submitted to our committee. I stayed months in your office on these matters; so far as working out these details I know I did not. I know we had them in conference; and the Central Trust Company claimed ownership of a part of them, but who got up this settlement I do not know. I knew that the question of dividing these securities between the Commercial National Bank and the Central Trust Company was up, and there was an investigation made and we met at the Central Trust Company's office and went over them all down there and were days and days working it out, and after we got through it was reduced to the form of that contract. I would not say that I alone participated in these negotiations so far as the Commercial National Bank was concerned, the whole Committee I remember, Mr. Anderson may have been along with me, I would not say that I alone did it. Mr. Anderson was president of the Central Trust Company and signed that contract as President of the Commercial Trust Co. I attended any meeting Mr. Taylor requested me to. I was present and assisted in working out this contract between the Commercial National Bank and several other banks, including the American National Bank, and T. C. Parker, under which a trustee was appointed for Parker's various corporations. I was President at some of them. I appeared in the meeting but I did not know that in the contract it was provided that I was acting as the representative of the Commercial National Bank, I also assisted in the negotiations with Mr. W.

E. Small. Mr. Taylor made known to me or the stockholders' committee, and I acquiesced in it, and one of the matters discussed was the taking over of the property on College Street, and I remember it was
660 taken over by the Commercial National Bank for $12,500, I remember the trade; he was indebted to the Commercial National Bank around $28,000, and it was only partly secured, and it was represented to me, or to me for the committee I think by Mr. Taylor, that he could effect a settlement in full for Mr. Small by taking his home—which was in the name of his wife—at $12,500. I thought that was an over-valuation for the house—I thought $10,000 was full value for it—and Mr. Taylor stated that he would only take the thing for $10,000. I approved the settlement and I still approve it as being a good one. I don't know how it was done, I think the Committee agreed then—I know I did, and he took it for $10,000. All the settlements with debtors of the Commercial National Bank whenever the American National Bank was not willing to take over the properties at full value—one hundred cents on the dollar, the approval of our Committee was always sought and obtained before they would make any adjustment, I think, I do not know of any specific case where they did not. I remember a great many instances in which adjustments and settlements of one sort or another were for discussion in which the approval of my committee was always sought. I recall the circumstances of the sale of the Commercial National Bank building, and remember the resolutions passed by the joint committee of the two banks, I think, there was so much of this stuff I can't remember it all. I recall after the building was advertised for sale and did not bring a satisfactory price at the sale and was withdrawn, and after that time the Directors approved a

sale to the American National Bank at $40,000.00, I think that action was the only taken, that is the only meeting I can recall; I looked at the minute book to see if I could find them. I have a recollection of taking such action, but I do recall attending a meeting of that sort. I do not recall this resolution attached to the Amendment as Exhibit B, my recollection is that we approved the sale to them. I remember a great deal about the Bank building because I know that matter came up for six months or probably a year before the
American National Bank ever took it into its
661 assets. We all had an idea about the value;
there wasn't any trouble arriving at the satisfactory value; but Mr. Taylor wanted to take it in at an arbitrary figure. To confirm that impression I think the minutes of the stockholders will show possibly that we asked for an expression of opinion as to its value from real estate agents in Macon, or either asked for a bid on it; that was all previous to the advertisement of public sale. I don't think the Small house was sold by the Commercial National Bank at public sale, that may be true, but I still say when we made the settlement taking the property at $12,500—under the agreement with the American National Bank to take it at $10,000, it was a good settlement and the two trades were simultaneous. I don't know why it was sold at public outcry. I don't see why he could not have made title direct to the American National Bank. The understanding in there anyhow was that the American National Bank should take it at $10,000. For a long time our committee held regular meetings, and were supposed to meet daily for a while right after they went in to it, and the meetings got less frequent as the business got less and for several months we were meeting at least every week. All the accounts of any size of people who

were indebted to the Commercial National Bank were discussed at these meetings. The matters were handled this way; Mr. Park, Mr. Hillyer, or principally, Mr. Taylor, was present a good portion of the time, and they would bring before us certain notes that they wanted us to advise with them about, and directions would be given either to give them a longer time or to place them with your firm for suit. I think the minutes will show that papers from time to time were turned over for suit, and extension of time was granted by our committee and any property turned in for settlement that was approved by our committee. I would not say that additional security was frequently taken by your Committee, or that we got any at all, the American National attended to that end of it, we approved it. I do not recall any time about securing securities; the other matters submitted to our committee, and there was several settlements that I undertook to bring about
662 myself, and possibly Mr. Anderson undertook to bring about some of them too, I do not recall, but maybe he did, I believe he handled the Burke settlement, he also handled the Anderson Printing Company settlement, I only recall those two, he may have handled others too. For the first two weeks I saw Mr. Lewis around the American National Bank, I do not suppose I had as many as two conversations with the combined officers of that bank from August first up to the present time, I don't think Mr. Lewis was there very long. I didn't see the other officers of the Commercial National Bank very often, I saw Mr. Mallary there the first day or two, I don't think I ever saw Mr. Cobb, I saw the clerk Mr. DeBorde, I knew he was there. I did not ever have the directors of the Commercial National Bank to fix my fee. Whether that matter was passed on at one time by the directors, will

say, when Mr. Anderson and myself took active charge up there it was understood—I don't know whether on objection of Mr. Higgins or how it came about—but I know it was the understanding that we were to receive a certain salary, or the salary of Mr. Cobb should be paid us. That was prior to August 1st, and we had never drawn it, and the matter did come up after that; and the American National took over the Commercial National, and it was paid. It was not paid by a check drawn on the Commercial National Bank, I know that is wrong, because your own resolution, the American National Bank, provides that it shall be applied on a paper of Mr. Anderson and myself; I have read the minutes of the American National Bank, so I don't think it was paid to us that way. Regarding all of the debtors of the Commercial National Bank making their own arrangements with the American National Bank, I don't know about that, I did not have a thing to do with that feature of it, but I do know that as a matter of fact, I had to arrange my own matters with them, I know what the deal was, the deal was for the American to take over all the desirable business of the Commercial National Bank; and those depositors who were debtors of the Commercial National Bank it naturally took some little longer time to transfer those matters, a man who did not care to transfer his deposit around, unless he also made banking arrange-

663 ments to take care of his maturing obligations.

I don't know about the customers of the Commercial National making his own arrangements, I know nobody made my arrangements. I assume that the customers of the Commercial National Bank were to make their own arrangements with the American, and I suppose that was true both as to the transferring of the deposit and as to taking care of any obligations that

might be there, I don't know a thing about the other customers. I previously stated that a number of papers of the Commercial were sent to your firm for collection; we could not get anything on them, the parties would not respond. I presume the American National Bank took over that paper as much as they did any of the rest of them. I knew when a man made arrangements with the American that the American took it over and gave the Commercial National credit for it, and when they did not turn it over but put it in suit, that the Commercial was not given credit for it until it was actually collected. I suppose what was regarded as desirable paper by the American National Bank it took over very promptly and gave the Commercial National Bank credit. I do not know how much paper the American National Bank took over. Regarding those checks of Mr. Anderson's and myself, that seems to be Mr. Anderson's in shape of a draft on the Commercial National Bank, a voucher or check, drawn on the Commercial National and attached to a Cashier's check, on a Commercial Nat[illegible]ficer, drawn on the Commercial National. I do n[illegible]recall how mine was handled, but from that I would assume that Mr. Anderson had seen the check. I was furnished with a copy of the audit of the Commercial National Bank. My committee had one of the copies of the audit, but I did not have the audit with me, to check off the papers as they were taken over by the American National Bank, except probably the first one or two meetings. I have seen the American National audit they had it there before us a number of times, a copy of it. The last audit that I have seen, would make it appear that the papers were left open until they were actually taken over—until the accounts were actually taken over and arrangements made with the American National Bank. For my services as a

member of this committee I brought suit against
664 the Commercial National and in that suit I claimed that the Commercial National Bank was due me $5,000 a year for two and a half years, and the suit has since been settled.

Re-Direct Examination.

This payment was made to Mr. Anderson and myself for services before August first, for services rendered prior to August 1st. Mr. L. P. Hillyer o. k'd that voucher, it is his initials. He was vice-president of the American National Bank at that time. I have learned so in the last few days that the American National Bank passed on this matter at a directors' meeting, I have seen a reference to it in the minutee. I did not pay any attention to the method of the keeping of these accounts, charges and credits after the Commercial National Bank's assets and business were moved down to the American National Bank. When I say I assume so and so was done, it is based on what I have learned here and from the fact that I have seen the first audit of the Bank and the last audit. I did not have any knowledge that these things were being done at the time, as I did not know anything about it at all. I had no agreement that the balance, as between realization by the American National Bank on assets of the Commercial National Bank and sums paid out by the American National Bank on liabilities of the Commercial National Bank, should be carried as an overdraft. As a member of the Finance Committee, or otherwise did not make any agreement with the officers of the American National Bank as to items being carried like that, being due to the American National Bank, as it never came to me at any time or any form. I did

not make any agreement as a member of the Finance Committee or otherwise with the officers of the American National Bank that any of these items should be carried by the American National Bank as loans and discounts in any statement of resources of the American National Bank. As regards to active business the Commercial National went out of business August 3rd, 1914, when I said opened up, I meant we were not making any new loans. I did not mean that the Commercial National Bank opened up and continued in the
665 banking business after August 3rd, 1914, as they did not. Regarding how a cashier's check is regarded in banks doing a regular banking business, my understanding is when a cashier's check is issued the party to whom the check is issued, or for whose account it is to be charged, is debited and the account known as cashier's checks outstanding is credited, that appears in a statement as a liability and the check comes in and is paid, and that account is debited. The records of all well regulated banks, there ought to be a record of every cashier's check issued; that is an obligation of the bank, it should have been the method of keeping the checks of the Commercial National Bank while it was in active operation, and I do not know anything to the contrary; that ought to be. I have not made an examination of those so-called records of the Commercial National Bank after August 3rd, 1914, to see whether or not any account was kept of cashiers' checks. Regarding the minutes of the stockholders' committee, I ran through them hurriedly, so I would not like to say they are all positively correct, unless I examine them all. I haven't a copy of that book, and I suppose Mr. McKay had that one. I know at one time I wanted to see the book and he stated to me that he thought it was down at the American National Bank office, in

fact, I did not know that it had been found. The stockholders' committee handled such matters as they were requested to handle or matters consulted with about by Mr. Hillyer and Mr. Taylor and nothing else. In matters where the Commercial National Bank was interested, and the American National Bank was interested, and I might say any other bank interested, they would have either my committee or myself present with officials of the other institution. Any excess of assets over liabilities was to go to the stockholders of the Commercial National Bank. This stockholders' committee was appointed by the stockholders of the American National Bank. The committee worked with the American National Bank in the interest of the stockholders of the Commercial, as to the excess of assets over liabilities, that is whom we represented. With regard to the Small claim, it is true that so far as I had anything to do with it, it meant that the claim was abated
666 by $2,500, and I thought it was a good settlement at the time. That large indebtedness was only partly secured. I do not mean any reflection on Mr. Small but there was not anybody's paper worth quite as much in those days—was not regarded quite as highly as it had been previously. In regard to the bank building, Mr. Taylor expressed the idea that the American National Bank should take this specific piece of property at some arbitrary figure; it was discussed several times as to the best method of taking it over, it was his idea, and for that reason that it was best to have the approval of the directors of the Commercial National Bank.

Re-Cross Examination.

There was also a considerable discussion between my committee and Mr. Taylor about taking over the re-

mainder of the assets of the Commercial National, in connection with the taking over of the Commercial National Bank building, and as to whether the American National Bank could do that; that came up before the committee several times; we had there an embarrassing proposition just like the bank building, we didn't know what value to put on them. It was also discussed as to how they were to be valued and how we could get at them so as to be fair to both parties. Those were the assets of the Commercial National Bank that had not been realized upon. The Commercial National realized on them, but I don't know whether the American did or not. In other words if a man owed the Commercial Bank a thousand dollars note and that note was renewed for him by the American National Bank, the Commercial got credit for the thousand dollars whether that note was ever paid or not, if it disappeaerd out of the assets of the Commercial National Bank it only got out by two methods—either charged off to profit and loss or paid. These assets were under discussion during the years 1915 and 1916—all of the assets that had not been charged out of the Commercial National Bank assets, and therefore had not been taken over by the American National Bank.

667 Re-Direct Examination.

When I say charged out of the Commercial National Bank assets, I mean this, if you make a statement of an institution as of today, and had a certain paper listed in it and the next statement did not show that paper, and when I answered Mr. Park's question that it had been charged out of the assets of the Commercial, I meant the paper remained in there, was not paid. The American National Bank took over the assets of the

Commercial National on the day of the contract on August 1st, 1914. They took over all of the assets of the Commercial at that time. Mr. Lane was counsel for the Commercial National Bank. In my dealings on the committee of the stockholders of the Commercial National Bank, assisting the American National Bank in determining what the proper method of handling all these assets was, I consulted Mr. Jones and Mr. Park, of Hardeman, Jones, Park & Johnston, and my consultation was with some member of that firm. They were counsel for the American National Bank. They had never been counsel for the Commercial National Bank as far as I know. They had never had anything to do with the assets of the Commercial National Bank prior to August 1st, 1914, so far as I know. I do not think that I was in Mr. Lane's office exceeding once or twice after August 1st, 1914. These matters would come before our committeee, brought before us by some official of the bank, the American National Bank, or Mr. Park, and various expressions were made and the American National Bank officials would tell us what they knew could not be collected and advise that it be sent to Hardeman, Jones, Park & Johnston's office and we always acquiesced. They did not have any voice in directing what lawyers they should be turned over to.

Re-Cross Examination.

Mr. Lane represented the Commercial National Bank during this period, I recall the Birdsey matter; he and your firm represented them, and he represented them in some suits brought in the United States Court, I think. My idea was that everything in connection with the Commercial National Bank ceased on August
668 1st—and that no compensation was paid after that. After reading the letter, I think Mr. Lane

did represent them. This may have been a matter in his hands—it seems to be October 23, 1915, whether it was in his hands prior to August 1, 1914, I don't know. I did not read the letter whether it speaks of $1500 fees for general services, I thought it was a collection matter, as well as the $500 fee in the Burke matter, I also thought it was a collection matter; I did not know he represented the Commercial National Bank except in the Birdsey matter and a suit in the United States Court. My recollection is that he was paid a fee, I am not certain whether your firm was included in that fee, I think you were. Regarding a fee fixed by the directors to be paid Mr. Lane and this was to be taken on account of that fee, my recollection is that it was about $2500, and the American National Bank wanted the action of the Commercial directors before they paid that claim. This is an audit of the Commercial National Bank—that I held as chairman of the stockholders' committee, an audit of August 1st, 1914, by Alonzo Richardson Company, and this audit of date ..... by Alonzo Richardson Company going through there you find marked opposite these papers, all along here, under the head of loans and discounts, 'paid'—opposite the amount of the different notes. I mean by that the this paper was paid, that is written there. It means that they were paid, but does not necessarily mean that they were taken over by the American National Bank. It would mean that they were paid; that the records show that they were paid; I don't know whose writing that is on this book; it looks like the same writing of some clerk in the American. All I recall on the line opposite here Leon S. Dure, those are marked paid. So far as the books of the Commercial National Bank was concerned it was paid; the American National Bank furnished me the money—I don't object to saying that.

My account was transferred to the American National Bank, some of them I paid without any assistance from them, but others the Commercial Bank were given credit. The number marked 'to attorney' means
669 that they were in the hands of attorneys for collection, so far as we authorizing them we acquiesced in anything that was the judgment of the committee or the officials of the American National Bank—we were guided by them. I assume those papers submitted to my committee with the recommendation that they go to attorneys, in which I acquiesced.

Re-Direct Examination.

The two matters I spoke of being handled by Mr. Lane were matters involving the validity and legality of this contract itself, my recollection is that shortly after the Commercial National Bank was transferred to the American, the Birdsey suit was brought, probably within a week, and Mr. Lane had previously been counsel, for the Commercial National Bank and he and Mr. Park, I think, jointly defended that suit. Then the question arose as to the payment of fees, and that was an expense of course that could not have been listed August 1, 1914, and Mr. Taylor before making payment of a fee wanted the approval of the directors of the Commercial National Bank, and it was given. That covers it, I think. It was an attack on the validity of this contract. I know we were fearful that they might set aside this contract, and the Commercial National Bank as a National Banking Association was a party—made a party defendant.

**W. T. ANDERSON, testifies:**

**Direct Examination.**

I was director of the Commercial National Bank and for the six months prior to August 1st, 1914, I was a member of the Finance Committee, and being a director, I was also a stockholder. I was present Friday night, July 31st, 1914, when the representatives of the American National Bank examined the assets of the Commercial National Bank, and the examination lasted from 9 o'clock at night until from 5:30 to 6:30 the next morning. The Commercial National Bank operated as a going concern on Saturday August 1st, 1914, for the last day, that is had its doors open, and the affairs, the assets of the Commercial National Bank of
670 August 3rd, 1914, were transferred to the American National Bank, and the Commercial National Bank as a bank did not conduct any further business. When the resolution of the two boards of directors had been made, I conversed with Mr. Taylor (R. J. Taylor), with reference to the employment of any one who had previously been connected with the Commercial National Bank, I told Mr. Taylor that the Commercial National Bank had gone out of business, and that it would be a great hardship upon a number of the employees to be suddenly thrown out of work, and that if it were possible for him to utilize them in some way, that I thought it would be an act of justice and fairness, and I urged that upon him, and he told me that it was his intention to do so as far as possible, and that conversation was before the actual employment of these men around at the American National Bank. I neither as a member of the Finance Committee, did agree with any officer of the American National Bank

that any balance between the realization by the American National Bank on the assets of the Commercial National Bank and any amounts paid out by the American National Bank under its obligations to pay the liabilities of the Commercial National Bank should be carried as an overdraft of the Commercial National Bank. I did not, as a member of the Finance Committee or individually, agree with the officers of the American National Bank that such deficiency, if there was any deficiency, should be carried in the resources of the American National Bank as loans and discounts. As a member of the Finance Committee or individually, I did not agree with the officers of the American National that such deficiencies, if there was a deficiency, should be carried on the record kept on the books of the Commercial National Bank as an item due the American National Bank. I had no knowledge of the handling of the assets and affairs of the Commercial National Bank by the American National Bank, at the time. As a member of the stockholders' committee I conferred, was in consultation with the American National Bank committee on various matters concerning the Commercial National Bank assets.

671 Mr. Hillyer was appointed General Manager of the Commercial National Bank's affairs, whatever matters he wanted to advise about, or information he wanted, he summoned the committee representing the stockholders' interest of the Commercial National Bank, and usually outlined what his attitude was, or what the desire was, and ours would acquiesce in it. No official authority was assumed by the stockholders' committee of the Commercial National Bank. Mr. Dure and I had several conversations on that line, about that matter, and there was more or less jest as to our absolute lack of authority and the necessity of

our agreeing to anything that the American might outline. No one dictated the activities and actings and doings of the committee of the stockholders of the Commercial National Bank, that I know of. Mr. Hansell Hillyer, or Young Hillyer, as he was first called, as he was designated as the manager or representative of it, outlines my work then. Hansell Hillyer was put in charge and then it was turned over to L. P. Hillyer at a later date and on whatever matters developed that he wanted advice or information about there was a meeting of both committees and we met and heard what the recommendations were, and we usually agreed to them, in fact I don't know of any objections or protest that was ever considered valuable or worthwhile, except when John F. Lewis was present at one of the meetings and refused absolutely to agree to anything. I do not remember about Benton, they took the position though that they would not agree to anything, and of course that would not get the situation any further along. In the negotiations of Friday night, July 31st, and the subsequent negotiations, it was never in contemplation of the Commercial National Bank to give notes to the American National Bank. No mention of these notes were ever made as far as I know. As far as I know, or consented to, Mr. E. N. Lewis and the other men who had previously been connected with the Commercial National Bank never performed any function or duty except as a part of the liquidation or administration machinery under this contract and under the direction of the officers of the American National Bank.

672 I am familiar with the advertisements of the Commercial National Bank and the American National Bank respectively, in the Macon Telegraph of Sunday, August 2nd, 1914, and the Evening News of Monday, August 3rd, 1914. I was also pres-

ent when those advertisements were prepared. There was a collaberation on them between Mr. Taylor and Mr. Hillyer and Mr. Jones and Park according to my best recollection; it was done in the office of Hardeman, Jones, Park & Johnston, counsel for the American National Bank. I am advised that Mr. Park is a director of the American National Bank and Mr. Taylor was president of the American National Bank, also Mr. Hillyer was vice-president of that bank. That is true of both advertisements. My knowledge as to who actually took those advertisements to the office and had them inserted in the paper, is not certain, but it is true that Mr. Taylor did in fact have it done. Those advertisements were prepared and made with the consent and with the full knowledge and direction of Mr. R. J. Taylor, the President of the American National Bank. Regarding the minutes of the stockholders' meeting as transcribed by Mr. George Derry, alleged to have been the Secretary of the meeting, and reporting me as having stated in that stockholders' meeting that the venture of the American National Bank in taking over the Commercial National was backed by a stated excess of assets over liabilities, and by the individual liability of the stockholders of the Commercial National Bank, I did not make such a statement as that; as it was certainly not in my mind. If you will examine the report that Mr. Derry made of that meeting, you will find in one place there where he purports to report me verbatim, the quotation makes it appear that I asked Mr. Higgins, the Bank Examiner, that if the Commercial National Bank remained open—after he had said that he wanted me to go on the Finance Committee that I asked him if the Bank remained open what would be the depositors' liability. That is a perfectly absurd question charged to me and attributed to me. I

never asked any such question and never made any such statement, yet that is Mr. Derry's stenographic report of what I asked. What I did ask of
673 Mr. Higgins—and what I certainly must have said to the stockholders, was, not if you report to me or indicate to me that the Bank is overloaned and there is any question about its solvency, and we keep it open, will there be any liability on account of receiving deposits; and you see, therefore, that it cannot be a correct stenographic report; and as Mr. Dure has said my statement at the stockholders' meeting included some other matters that are reported there; and this would certainly bring that feature into the question. Regarding whether or no in the negotiations of Friday night, July 31, 1914, or any proceeding or succeeding negotiations with Mr. Taylor, he made the statement that the American National Bank venture was backed by the individual liability of the stockholders; no, sir, that was never contemplated, and I substantiate that, so far as my recollection goes—of course it has been four or five years ago and a man is liable to have forgotten a great many things—but I recall a talk I had with Oscar Bradley. I am satisfied that I did not make the above statement, and I know that the report that Mr. Derry makes as to what I said there, is not otherwise correct. I do not know whether Mr. Derry was a stenographer or not.

Cross Examination.

I recall being present at the meeting of the stockholders held September 30, 1914, but I do not recall acting as chairman of that meeting. Regarding whether I made any objections to correctness of the minutes made by Mr. Derry of the previous meeting, I do not recall

doing so, as I do not remember having heard them read. I am quite sure I did not make any objections to that. I was present when the advertisements were prepared that were published in the Telegraph and the News. I did not assist in preparing them, I did not have a word to say about it, I was a very small potato in a very big hill, and I realized it fully. I cannot recall the fact where my professional advice as a newspaperman was taken into consideration in the preparation of these very advertisements. I did not assist materially in framing them so as to make them appeal to the public, that is a temerity that I do not boast. He, Mr. Hillyer,

674 was more than representative of the Commercial National Bank affairs, he was practically designated the manager, and worked out these affairs, he was practically designated the manager, and worked out these affairs; and that was almost Mr. Taylor's statement about it. Mr. Hillyer was a member of the committee appointed by the American National Bank to cooperate with the stockholders' committee in handling the affairs of the Commercial National Bank, and so far as I recall, he was selected by the joint committee as chairman of the joint committee, and he had these matters turned over to him. I can't recall whether he was elected chairman by the joint committee, as I haven't any recollection of that feature at all. But at various meetings when both committees were present, Mr. Hillyer actually presided as chairman on the joint committee, and he consulted with me about how the account between the two banks was to be kept. I did not ask as to whether it was carried in the shape of an overdraft or whether notes were to be given, or how the matter was to be carried. I had nothing to do with the details of the accounts of the Commercial National Bank before it came down to the American National.

It is going a little far back, but as long as I was connected with the Commercial National Bank it is my understanding Mr. E. N. Lewis was the active bank man who managed the accounts, the details of the business of the Commercial National Bank ever since its organization, but he was cashier all the time I knew the bank, and that came directly under his duties, handling the accounts and managing the clerical force, the details, conducting things of that sort, that is my inference drawn from what my knowledge is of what the cashier's duties usually are and he occupied that position. There was at no time any suggestion of notes being given between the two banks. I do not know the language of the resolution which I as director voted for. I do not recall where the resolution provided that the assets of the Commercial National Bank should be transferred to the American National Bank as cash or as collateral for the notes of this association, I did not know that it was in that resolution. Whatever was written I passed up as a matter of record, the record can
675 be gotten without me carrying it in my head. My recollection is that there was never any suggestion of notes yet that appears in the resolution, I have no recollection of it, but it appears in the resolution. I recall many of the settlements and transactions with people who were indebted to the Commercial about which Mr. Dure was questioned, when I was a member of this committee. I remember the question of settlement as to F. L. Mallary's various corporations and the transfer of the stock to the Commercial, and also recall the settlement between the Central Trust Company and the Commercial National Bank, but I do not recall just what the relations were, I was President, and am President of the Central Trust Company, and I presume I took the proper position in any ad-

justment proposition between the two institutions, they involved large values, one set of bonds of $150,000 and the other a hundred thousand, I do not know exactly but I recall the figures ran into the hundreds of thousands. The Central Trust Company made some adjustment with the Capitol Savings Bank, but I do not recall it having had any dealings with the Commercial National. Regarding an elaborate contract between the Commercial National and the Central Trust Company and the Capital Savings Bank that was submitted to the Board of Directors of the Commercial National Bank on November 10, 1914, and approved by them, I don't believe I was present. Neither do I recall the meeting there was contract with the Central Trust Company in reference to the Parker assets, consented to and ratified, I do not recall either of having been handled with the Commercial National Bank directors. If it says that it was fully explained by Mr. Anderson and Mr. Dure, members of the stockholders committee, I must have been there, I do not recall it having been handled with the Commercial National directors. There are so many cross fires in it and interlacking interests, that I had forgotten the Commercial National directors handled any feature of it. Mr. Dure is practically correct in his recollection that wherever the American National Bank was unwilling to take over an account and give the Commercial credit for it at its face value, that the matter was submitted to my committee, and
676 the valuation to be placed on the assets would be agreed on. Now I recall one meeting at which you were present and Mr. Hillyer was present—and this is only in the interest of the truth of the situation—I was the only member of the Commercial National Committee present, and there were assets written off at one fell swoop under the recommendation of Mr.

Hillyer, as I recall, and yourself, of $140,000 or $150,000,—along there somewhere. I presume that I agreed that they were worthless, if the sheet was before me I could say. You and Mr. Hillyer collaberated and decided that they were worthless and wanted the approval of the Commercial National Bank Committee and after reading them all over to me, as I recall, I remarked that I was only one member of the committee out of five, and felt there was a pretty big responsibility involved in that sum, but if you two decided it was worthless I supposed your judgment could be relied upon. Dure and McKay kept the minutes, and neither of them was present and I don't know whether there are any minutes of that particular meeting. I did not keep any minutes; I thought two secretaries were enough in a committee of five. I kept that minute. There was nobody else present, it says the meeting was called to order by W. T. Anderson and there being nobody else present the meeting was adjourned by W. T. Anderson, President, W. T. Anderson, and W. T. Anderson, Secretary. I haven't any doubt in mind but that I was present at the board of directors of the Commercial National Bank meeting, when the resolution was passed for the sale of the Commercial Bank Building to the American National Bank for $40,000, there was so much said about the Bank building that I cannot recall the resolution having been presented, and I haven't any doubt in mind that that resolution was put through the board of directors, I would not question it. I do not remember clearly being present at the meeting when the resolution was adopted, but the records will easily show, whether I was or not. Regarding at the bottom of the resolution, a provision for having it signed by other members of the Committee not present at the

meeting, I do not remember that action being
677 taken nor sending it around and getting the other members to sign it up. I will say frankly and candidly I do not recall it; it is one of those things where I depend on the records rather than on my memory; when I had handled anything of that kind I dismissed it. I recall that the building was advertised to be sold at public outcry, but I do not remember the details, just what they are. I know the American National Bank had it one way or another, and went through the various maneuvers to get rid of it. I recognized the advertisement you had here as having appeared in the Telegraph. I do not recall that I was at the meeting at which the building was discussed; if the minutes show that I was, I no doubt was present. The disposition of the building and the remaining assets of the Commercial were frequently discussed, but as for saying what was discussed at any particular meeting, I do not recall. I know we held two or three directors' meetings after the Commercial was turned over to the American and they were to discuss and take action on these matters, but what the particular matters were I would say is a matter of record. At the various meetings of the stockholders' committee meeting with the joint committee of the Commercial National Bank, there were numbers of discussions in regard to the disposition to be made of the various matters, including the assets of the Commercial National Bank, and as to whether or not the American National should take them over, and if it did take them over what price was to be paid for them, and I assume that that applied to uncollected paper. I suppose the enumeration at the different meetings consisted of various kinds of assets; as to whether it embraced all of them or how many, or what particular assets, I could not say. I

recall the various discussions as to what disposition I would make of these assets and whether the American would take them over. I did not know that that was definitely determined until the American National Bank notified the stockholders that suit had been entered against them; that was the first official notice. I knew as a member of the committee that the assets were way beyond less than the amount the American had paid out, and especially after we held the meeting in which you wrote off $150,000 at one time; it faded mighty fast, I don't know what year, but it was proba-
678 bly 1915 that it faded so fast, and by the middle of the next year I knew there was no surplus for stockholders. I could not say when the American insisted on getting a valuation placed on these uncollected assets, including the building, if you have the papers before you, and you will check it up you can easily ascertain what date the lump sum of assets was written off, and draw your own conclusion as to our knowledge of a surplus coming to the stockholders. I presume that is correct, that it sold the bank building in 1916, two years after the contract was made, I don't know for sure, but it can be verified. The resolution was adopted July 1st, 1916, and the contract was August 1st, 1914, so it lacked one month of being two years. The question is as to dates, I hate to be slow about answering questions, it involves a matter of adjusting dates to impressions or knowledge and I can't say when I first realized there would be no surplus or money for the stockholders it was sometime I presume within a year, within a year Parker had gone into bankruptcy, I don't recall clearly, but I think he had. I remember that he owed the bank some $170,000.00 and it was a very short time after the Commercial National was taken over that Mr. Jelks went into bank-

ruptcy, and he owed the bank some ninety odd thousand dollars. I cannot say exactly how long but it was in compartively a short time that the Mallary Mill Supply Company had gone into bankruptcy, but I do not recall just what that concern owed the bank, it was a large sum, and I thought it was somewhere around $60,000.00, but I may be in error. There was a great many large accounts that were admitted to be worthless somewhere around that time. At the end of the year the losses that had been definitely ascertained made it absolutely sure that there was no surplus of assets over liabilities of the bank. During the years of 1915 and 1916 the question of what to do with the remaining assets was continually being discussed and the valuation that was to be placed on these assets being discussed. Mr. Dure was rather private with the stockholders' book; he always made the little reports at these meetings; he and McKay did not dignify me with an exhibition of the inscriptions. Still I should say that that is the minute book of the stockholders' committee. I
679 served in this capacity continuously as long as it was in active existence, and I also brought suit against the Commercial National Bank for five thousand dollars a year for a period of two and a half years. I served on the committee, until you sued me; and I thought that was notice of discharge. I do not whether the individual accounts of the customers of the Commercial National were transferred by the customers themselves to the American National Bank, or not. I would almost say yes—in my own particular case—I have been trying to recall it since I heard you ask others the question as to what was done in that matter, but so far as the arrangements for handling my own account, I made them myself, and my papers were held just in the shape they were when the Commercial

National Bank had them until I made my own arrangements to handle them otherwise. I knew nothing of anybody else's case. I only know that in handling the Anderson Printing Company and the J. W. Burke Company I saw the original papers; I knew the American National Bank was pressing those for collection and was holding off before they would mae any arrangements for their accommodation. I knew that the American National Bank did not give the Commercial National Bank credit for any of those papers until they were paid, or until they were renewed by the American National Bank itself. As soon as the American National Bank took over an account, it immediately gave the Commercial National Bank credit.

Re-Direct Examination.

Regarding how I heard that the American National Bank did not give the credit to the Commercial National Bank until the paper was paid or taken over, I only heard in the meeting Mr. Hillyer or Mr. Taylor state that they were willing to handle this or that account if something would be done to put it in shape. I was not told what entries were made on the books, or how the books were kept. When I spoke of the American National Bank taking over any asset, after the stockholders' committee had agreed to a certain valuation the American would take over an asset—I mean by that that the American National Bank would take over that specific asset or piece of property free from any claim that the shareholders might have in the excess of assets over liabilities. The American National Bank took over the entire assets of the Commercial National Bank under this contract either August the 2nd or 3rd. The meet-

680

ing was held on Friday night; the conclusion was reached Saturday morning, and the assets offerred to the American National sometime between Saturday afternoon closing and Monday morning. I am quite sure when Mr. Hillyer requested the appointment of this stockholders' committee, he did not think the Commercial National Bank was insolvent at the time, and the stockholders did not think it was insolvent. At the time this committee was appointed, it was in contemplation of all parties that there would be an excess of assets over liabilities of the Commercial National Bank, and that it was under these circumstances that the stockholders appointed this committee, named it, and invested it with authority. In regards to these notes; after this resolution was adopted, respectively, by the directors of the Commercial National Bank and American National Bank authorizing the transaction in which the assets of the Commercial National Bank should be transferred to the American National Bank, as cash or as collateral for notes, no mention was ever made of giving notes. In any of the transactions, interviews or conversations with the officers of the American National Bank, I never heard of the proposition of the Commercial National Bank giving notes to the American National Bank, neither was it in contemplation, so far as any of the conference was concerned, that notes would be given as part of this trade.

E. Y. MALLARY, SR., testifies:

Direct Examination

I did, in behalf of the Commercial National Bank conduct these negotiations, and made the trade with the American National Bank, whereby the American took over the Commercial, I mean I made the trade with Mr. Taylor, and conducted the negotiations with Mr. Taylor. He was President of the American
681 National Bank, and I was President of the Commercial National Bank. So far as my oral negotiations with Mr. Taylor in my trade with him was concerned, the assets of the Commercial National Bank were taken over by the American National Bank, as cash, at least I understood it was taken as cash; there was no question of any notes or security. There was no question about a loan. Regarding what seems to be no mention of any interest charge in the resolution of the board of directors of the Commercial National Bank, but when the contract was written there was a provision in it that before American National Bank should pay over the excess of assets over liabilities, they would have the right to deduct seven per cent on the amounts of money advanced; my understanding of that provision when I accepted this contract, was that for the money that the American National Bank advanced to take care of the depositors they would be entitled to that interest on it, as against the final settlement with the stockholders of the Commercial National Bank,—it would be a part of the expenses incurred in the liquidation. It was my understanding that it would be deducted as an expense of the administration of the affairs of the Commercial National Bank that was to be deducted before the shareholders would

be entitled to any excess. Mr. Hillyer, vice-president of the American, terminated Mr. E. N. Lewis' connection with the liquidation or administration of the affairs of the Commercial National Bank. Neither I or any other officers of the Commercial National Bank had anything to do with terminating his work at the banking house of the American National Bank. Regarding my testimony of yesterday, and what I understood the directors of the Commercial National Bank were called on to do, or were doing, with reference to the sale of the Commercial National Bank building to the American National Bank on or about July 1st, 1914, I understood we were called upon to agree as to the price of the building, that was the extent of my dealings in the matter. My recollection is that the meeting of the board of directors, the matter of the prices on the building irrespective of the date was held on the same date and I was telephoned to and asked to come down
682 there, that was the meeting at which we had difficulty to get a quorum, and I went down there and there was just a few present, and I was detained there quite a while waiting until a quorum did arrive. The resolution was not read in advance, while I was waiting for this quorum. When the quorum was obtained the resolution was read and passed on right there. I do not recall anything in the resolution stating that the price of that building should be credited on the indebtedness of the American National Bank to the Commercial, neither did I notice it at the time, all I have any recollection of is that we fixed the price at $40,000, and I remember that I did not want to fix it at that; I left it with the crowd; I simply agreed to it because we could not do any more; that was the only thing that was impressed on my mind, the $40,000. I think Mr. Taylor understood this transaction and the

employment of these words, as I did. I do not think there was any other idea about it at all, I think he fully understood. I did not discuss anything with Mr. Taylor pertaining to this particular business in this transaction, except the consolidation of the two banks, and the incidental liquidation of the Commercial National Bank. In connection with this transaction which led up to the taking over of the Commercial National Bank by the American National Bank, I did not discuss anything with Mr. Taylor except the consolidation of the two banks with the incidental liquidation of the Commercial National.

Cross Examination.

Regarding the resolution of the Board of Directors providing for the sale of the Bank, referring to a letter written by Mr. R. J. Taylor to E. Y. Mallary, President of the Commercial National Bank, dated July 1, 1916, I am very sorry but I have absolutely no recollection of this letter. I would certainly say so if I did; my only recollection is that Mr. Taylor telephoned me and asked me to come around there, I don't remember ever seeing a letter like this before. If I did I certainly would say so. I do not recall any letter having been handed me by Mr. Taylor on this subject, so
683 I have no reason to question the correctness of that as a copy of the letter, no further than I stated. I can't remember the date that Mr. Lewis left the employment of the Commercial National Bank, but Mr. Hillyer let Mr. Lewis go while Mr. Taylor and I were on our vacation, and all I know about it was what I got from Mr. Taylor when I talked with him, and of course I did not talk with Mr. Lewis about it. I was

not here at the time, do not know any of the circumstances, and Mr. Taylor, was away also, and he told me that he would not have allowed it if he had been here. I do not know approximately when he left, only that it was while I was gone, but I do not remember how long I was gone, but it was during my absence. I think I left Macon within a few days after the stockholders meeting of August 12th, and was away several weeks. I did not make two different trips then. In my statement I said I was away six or seven weeks, and that is the best of my recollection, and I didn't go again then, but probably did the next year. Mr. Taylor went off on his vacation a little after I left, and it was during that time that Mr. Lewis was dismissed by Mr. Hillyer, I think; I would not fix the dates because I do not remember; it seems to me Mr. Lewis was only with the bank probably about six weeks, it seems to me that it was in October following that he was dismissed by Mr. Hillyer; I can get about that close to it. At the time the Commercial National Bank entered into the contract with the American, and during the negotiations leading up to that contract, arrangements were also made through Mr. R. J. Taylor for a similar contract between the Continental Trust Company, of which Mr. Taylor was President, and the Commercial & Savings Bank, of which I was President, but these arrangements with the Commercial & Savings Bank was made after the deal with the American National Bank had gone through, but they both however, went into effect on August 3, 1914, the same morning, after they agreed to take over and consolidate with the Commercial National Bank, I then asked Mr. Taylor to take up the question of taking over the Commercial Savings Bank with the Continental Trust Company. The

684 Commercial Savings Bank contract was closed in your office at 12 o'clock Sunday night, instead of two o'clock Monday Morning. We waited until 12 o'clock, it may have been that some of them may have come in and signed afterwards, my recollection is that I was in your office just at 12 o'clock [illegible] attached my signature to it then. It was all done d[illegible]ng the two days or three days. The negotiations be[illegible]een the two National Banks were taken up Friday ni[illegible]ht and closed Saturday, and the Savings Bank was taken up Sunday and Sunday night when it was closed. It was closed as I say Monday morning about 12 or 1 o'clock. The two contracts between the two institutions were made practically simultaneously, one was made Friday night and Saturday and the other was immediately taken up, but the provisions for the handling of the Continental Trust Company were taken up some time later. My recollection is that Mr. Dure and others, Mr. Anderson and Mr. Cobb who were all directors of the Central Trust Company, and were connected with the other banks as officers and directors, I don't think were spending a good part of their time with the Central Trust Company affairs while you were negotiating about the other, I am not connected with Central Trust Company, my recollection is that it was some little time after that that Mr. Cobb was president of it, and my recollection is it was several weeks afterwards that they went into it. They had very few deposits I don't think they entered into this at all. My recollection is that they only had small deposits, just two or three thousand dollars, a few thousand dollars, but I can't say exactly. I will say that I do say positively that I knew absolutely nothing about any trade with the National Banks to protect the American National Bank. I do know a similar agreement was made with the Con-

tinental Trust Company, but I never knew there was any such trade with the National banks. I do not remember that while Mr. Taylor and the other officers of the Continental Trust Company, I think Sunday, were at the building occupied by the Commercial National Bank and were going into the affairs of the Savings Bank, that Mr. C. B. Lewis came there and called Mr. Taylor out and told him that he could not abide by his trade to protect the American National Bank on account of any loss with the American National Bank, because his Board of Directors would not authorize him
685 to do it. Now my recollection about that was this: that probably representing the Continental Trust Company Mr. Taylor and Mr. O'Neal and myself—and then Mr. Lewis and Mr. Cobb and myself—were discussing up in that room—discussing this savings bank deal, and they were notified that these gentlemen were down there, Mr. Stetson and—I don't remember who else—were down below. I never went down there and I never knew what they did; it never came up; they called Mr. Taylor and I imagined it was something in reference to the present deal going on. I am sure that I never it was anything about this particular transaction. I don't recall that Mr. Taylor was very provoked with Mr. Lewis and said he should have told him that before the publication announcing the consolidation or taking over of one bank by the other was made—that it was then too late and he would have to go on with it whether the bank assisted him or not, neither do I recall Mr. Taylor making that statement, I know he got mad after that, Mr. Lewis told me he tried to get out of this deal with the Continental Trust Company; but I do not know about the other. The copy of the letter from Mr. Hart which sets up the facts about this guarantee does not refresh my memory

and I was not consulted about it at all; and all the dealings that day was figuring on taking over the Savings Bank by the Continental Trust Company; that was the thing I had my mind on. As to there being three large financial institutions in Macon at that time all more or less involved, I know about two of the Banks, but I never knew the Central Trust Company entered into this: They came up afterwards. That was about the same time the European war was declared. I don't remember but that is probably so, that it was about the same time that the New York banks were on a clearing house basis, I know there was a good deal of excitement all right. The confused situation had a good deal to do with my making the deal with Mr. Taylor, and that confused situation continued for some time,
686 and before general conditions adjusted themselves I left Macon. They did not adjust themselves for some time. I left Macon a few days after the contract. I had nothing to do with any of the deals or the Commercial National Bank and the American National Bank except up to the time I left. I did not understand that Mr. Dure and Mr. Anderson represented the stockholders, and Mr. E. N. Lewis, the cashier and the head of the clerical force of the Bank, were the people who worked out all of these details, I do not think Mr. Dure and Mr. Anderson had a thing in the world to do with the working out of any details, and I was down there about ten days to my recollection. I did not have anything to do except to try and get the customers of the Commercial National Bank to transfer their balances to the American National Bank, as all the details were arranged there, as I understand, all the details were made by the American National Bank. These boys were turned over to them; I told them to take down all the books and papers to the Ameri-

can National Bank; that they were in charge and could do what they said do. Mr. E. N. Lewis was the only real officer of the Commercial National Bank that was down there. Of course I presume those gen-
687 tlemen talked it over with him, but he was under their instructions and did what they said.

Re-Direct Examination.

I told Mr. Lewis and the other former employees of the Commercial National Bank to take these books and things down to the American National Bank and do what they said, that the trade had been made with the American National Bank and that they were in charge of the assets and books and for them to go down there and report, take them all down there that they wanted and that they were in charge, that is the reason these men went down to the American National Bank.

J. M. DeBORDE testified:

Direct Examination.

I was employed by the Commercial National Bank as receiving teller and general ledger book-keeper up to and including August 1st, 1914. The Commercial National Bank ceased the banking business on August 1st, 1914, and I went to the American National Bank on August 3rd, 1914, and went to work for the American National Bank on that date; I was working there in their bank; they gave us space, or cages, several windows. The partitions between the cages that were used by the former employees of the Commercial Na-

tional were not any different from the partitions between the other cages in the banking house of the American National Bank; they gave us the rear end of it next to the entrance on Cherry Street; we had the last two cages and two desks in the rear. The ones who were generally in charge of this work that was being done down there by the former employees of the Commercial National Bank, were Mr. Taylor and Mr. Scott and Mr. Lewis, they were in and out there all the time, I mean Mr. R. J. Taylor, president of the American National Bank, he was in and out this part of the bank, and came in several times every day, and the Mr. Scott I refer to is Mr. E. C. Scott, Cashier of the American National Bank. Mr. Hillyer was out of the City when we went down there, and when he came back to Macon he was in there all the time. The way we used to handle cashier's checks, we had a regular book and put down the name of the party who drew it, and
688 whatever the amount was, and then that afternoon it was turned over by making out a slip—the slip was turned over to me to enter up on the books, and when it was paid credited to the bank. The Cashier's check was kept on the general ledger. We did not call expense items cashier's checks, we called them expense vouchers. If a cashier's check was issued in the regular course of banking, the debit slip would go in on the individual ledger against his account, and to keep the general ledger in balance you would have to get a slip for that. After examining the ledger that had been in use by the Commercial National Bank,—up to and including August 1, 1914, and seeing how same was kept on and after August 3rd, 1914, were not put on the general ledger, there wasn't any cashier's checks according to the statement book drawn at all, if they were they were not treated as cashier's checks

regularly. This ledger shows small items or cashier's checks, that were issued prior to August 1, 1914, and entered on this book, and shows $5500; $5000 one time and then left $500 and ..... and left $50 and that was charged off and put on an individual ledger by Mr. Lewis. We were instructed when we went down there to take deposits from people who had not yet decided what they wanted to do with their balances—hadn't decided whether they would keep their account in the American National Bank or not. If a man had out checks and wanted to meet these checks he would leave his book, and if he didn't have the money in there to pay the checks when they came in. Mr. Lewis was the one who told us to do that. I did not hear Mr. Taylor say anything about that, I do not remember any deposits were made in the Commercial National Bank except under one or the other of the conditions I have named, except people that would come in there and say 'I am not quite ready to transfer my account' and want to make a deposit. I remember one or two that we hadn't had time to balance up their books to see how they stood the first week or so. I went into the American National Bank cages several times to carry customers and on other business. There were not any de-
689 posits taken on and after August 1st or any new deposits that I know of.

Cross Examination.

I don't know whether I was acting under the instructions of Mr. Lewis, the Cashier of the Commercial National Bank, or not when I carried the books and papers and cash of the Commercial National Bank down to the American National Bank, some of the boys of the office phoned me Sunday to go down to the American

National Bank Monday morning; but I did not go down, but some of them went down and stayed all day at the American National Bank Monday, but I went down there Monday night to get things together that I wanted to take with me, and I got up early the next morning and went down. When the Commercial National Bank opened at the American National Bank, our crowd was all up there in the rear end of the American National Bank in individual cages, and I had my own individual cage and desk room in there back of these cages for my office, and opened up there with Mr. Woodward, the paying teller, and I was receiving teller. The note teller and collection teller, we had were the same one, and the bookkeepers, in fact the whole force went down there. Mr. Lewis is the one that we would go to to ask questions, for the first few days he was with us more than anybody else. When a customer of the Commercial National Bank came in he was asked to leave his book to have it balanced, and I balanced that book for him, and if he wanted to check out his balance he did, but he was not obliged to check it out immediately, it was just left up to him, but we asked him to take it around to the American, as we were trying to do all we could to get the depositors to put their balances with the American. We asked the men to check their balance out and deposit them with the American and if he drew a check on the bank we paid those checks in cash if he had the money in there, I don't think we turned our cash over to the American National Bank when we went down there, Mr. Woodward was paying teller, and had charge of what cash we carried down there, and my understanding that he did not turn over the cash to the American National Bank, I don't anything about that part, for the first two or three days
690 we had all we could do; I had all I could do

to do what I had to do. I know that checks were paid over the window that were set apart for Mr. Woodard, the paying teller of the Commercial National Bank, and if a customer asked me to we took deposits for a few days, and then they were at night turned over to the paying teller by the receiving teller. Whatever came into the hands of the tellers during the day was turned over to the paying teller at night. Each teller had a cash book ticket and it was balanced up and turned over to the paying teller—any amounts that were paid on notes of the Commercial National Bank. Mr. Cecil Tharpe had charge of the collections, and at the end of each day he turned over his cash to Mr. Woodard, the paying teller. I don't remember that for a week or two the Commercial went to the clearing house every day. I didn't have anything to do with that. The papers only that went to the clearing house were made up by the paying teller; the paying teller was the one that had to check it up, and be responsible for it; it was not made up by him, but by the bookkeeper. I was under the impression that for only one or two days did the papers representing the Commercial National Bank go to the clearing house. I am not positive about that even. I stayed down there in charge of the Commercial's business until the last day of December.

691 I was the last one that was at the American National, but not the last employee of the Commercial National, as my son stayed down there after I left and went right on in and was collector for the American National Bank. The American employed some of my people in charge of the Commercial National Bank's affairs, but I was the last man of them in the Commercial National Bank cages set aside for us. I did work for the American National Bank some, I worked one day as receiving teller, for Mr. Chappell, as Mr. Scott

asked me to, as Mr. Chappell was sick, that was about the middle of October, I think. During the time that I was there, the expenses of the Commercial National Bank were paid by expense vouchers, at first I think Mr. Souder signed them, and after Mr. Lewis left there I signed them I signed my own each month to get my salary, I know, that is the way I got it. The expense vouchers were drawn on the Commercial National Bank, and were signed either by Mr. Lewis, as Cashier, Mr. Souder or myself, or some other representative of the Commercial National Bank, and we would go around and get Mr. Scott to o. k. it. There was no difference in the handling of those vouchers after August 1st from what it had been before August 1st, the expense account on the general ledger which it was charged up to. Those vouchers were never treated as cashier's checks, either before August 1st or after, as they were expense vouchers. According to the way I see on the books, there wasn't any difference in the way they were handled after August 1st, because there wasn't any cashier's checks drawn, but any cashier's checks that came in we paid them. The books show $5500 there, and the next day $5000 of it had disappeared, and a few days after ....., left $50, and a little while after that the $50 was charged off. The Cashier's checks were paid regularly
692 — just like they were before. The customers themselves were the ones who changed their accounts from the Commercial National to the American National, except those that were left over, and along the latter part of November or December the balance was transferred to the American by the order of Mr. Scott. At that time we had practically paid out everything except some small inactive balances. At the time of making the transfer we just transferred it by marking on the books transferred to the American. I don't remember

whether we gave a check to cover it or not, I guess we did though, as that was the only way to transfer by giving some kind of a ticket, or something to show for it. The method pursued at the end of the days business, when the matter was being actively liquidated at the close of each days' business all checks that had been paid for the Commercial National by the American National during the day would be brought back, and Mr. Lewis or some of them would give them a check for the total amount of all the credits, in other words, give them a check drawn by the Commercial National Bank on its account with the American National and the check was immediately charged on the Commercial National's own books by Mr. Lewis or the bookkeeper each day and as they were paid we would get the check back and charge it up I think. If the paying teller didn't have any money, he would o. k. the check and the American would pay it; then it would come back to the Commercial National that afternoon. We had a daily clearing between the Commercial National Bank and the American National, and those checks were regularly entered on the Commercial National's books as funds paid each day by the American and then we would give them one check for the total of all the checks. The checks the American National paid would be checks drawn on the Commercial National Bank and they would be first o. k.'d by me or some teller would bring them back to find out if they were good, and if they had that much money to their credit they would pay them, a customer if he wanted to, at first, under the instructions of Mr. Lewis, was allowed to make deposits on his account, that is what we did to accommodate the customers of the Bank. I think there were only a few deposits taken along all the time just for some little

reason like that, to keep a man's account from
693 being overdrawn, if a man's check should come in for $6, and he only had .60 cents in the bank, we would let him put in the $5.40 to make up the overdraft. A man's check would come in and we didn't want to protect them, and would take deposits to cover his account. (The receiving teller had a quite active business for a while on that account), we took in deposits to cover check for people that had already drawn checks. I had very little to do with the notes at all, except I would have the file there, and Hansell Hillyer and Karsten and Mr. Hillyer were always bothering with them. Mr. Hillyer had it half the time on his desk. If any notes were paid, they were marked paid on the loan and discount register of the Commercial National Bank, but some of them were still out when I left, as they had never been collected. They were kept separate from the notes of the American National Bank, as they were kept by the Commercial in that place where I was. As I collected a note, the man that paid it, if he had his name on the loan and discount register, when it was posted up, it was stamped paid, and the man was given credit for the payment on the books of the Commercial National, and any deposits that were made on the note were always credited to the Commercial to offset the debit of the American on the Commercial. We deposited any checks just like a regular account, any money taken in and anything to be deposited went to the credit on the books of the American and the Commercial, as both of them kept books. The American did not give the customer of the Commercial credit for it, for it was just money so far as the American was concerned. My impression is that all money that was collected was placed to its credit with the American National Bank, regardless of the source from which it came. If a man

paid me interest on a note, that interest, I think we had a way of keeping it there for a while there, say a $5000 note, interest $500—the $500 to loans and discounts and the $5 to interest. So far as the deposit with the American National was concerned, we did not keep any separate account of interest on the deposit slip, it would not show on the deposit slip, nor would it show on the books of the American National; the only thing that they would have any record of would be the deposit,
694 the slip would show so much money; you might put down a check, but you wouldn't know what it was for, it might be sales, interest, loans or anything else the Commercial National had, it was on the record in my book and I kept the records. A good number of the customers of the Commercial opened accounts with the American, but I don't know whether these customers made arrangements for the American National to take over their notes as well as their deposits or not, I didn't have anything to do with the arrangements made. I suppose if a man wanted to have a regular line of credit at the American National, he would have to take it up with one of the officers of the American; if he just wanted to start on account with his balance in the Commercial National, he wouldn't have to say anything, he would just draw his money out and put it in there. The only difference in handling a customer of the Commercial National after August 1st and before August 1st, if a man wanted to transfer his account, was that we asked him to put it in a certain bank. I didn't ask him to put it in the Fourth National, I told him that I wished he would put it in the American, but he took it anywhere he wanted to; we only advised him and insisted on him putting it in the American. Whether he put it in the American or the Fourth National there wasn't any difference in the way it was

handled, he drew his check. A majority of them went to the American, but those that did not and deposited them with the other banks, they deposited their checks with others banks, in fact every bank in town got some of them, and then they were brought in and collected. When a man made arrangements with the American National Bank to renew his note that had been previously carried by the Commercial National, he would take it up with one of the officers of the American National Bank and they would come back and ask me to bring the notes and I carried them around there. The way the books of the Commercial would show that transaction, it it was handled this way; if the man paid the note, it was marked paid on the loan and discount register; if it was not marked paid, I suppose it would still be open on the books now; I don't know what was done since I left there.

695 It was supposed to be run through the books and if the note was paid, it was entered up and paid, and until it was so paid, it stayed on the books of the Commercial National. It was never taken over by the Commercial National as a note that I know of. If a note was renewed, he would take the note out of the Commercial to the American and make out a new note, and sign that new note, a good many notes were were paid by notes on the American; these people would sign them and bring them back to me and take up their notes and then I marked their notes paid and give the party his note and mark the note paid on the books of the Bank, I don't remember exactly how the American would give us credit for these notes, renewed in that way; I don't see any other way except to give me maybe a credit slip or check, or something to show for that amount; I would have to turn in my report that afternoon, and I would have to get something from the Ameri-

can National to offset this asset I let go; a man would come back with a note O.K.'d by the American National Bank. I just imagine I took that note that afternoon and turned it in as so much the American National Bank owed us, and give credit for it on our books in that way. Instead of giving us credit memorandums, we would handle the notes something like this; a man would deposit his notes in the American and draw a check in favor of the Commercial National and turn it over to me in payment of the note. I don't remember that it was ever handled on credit memorandums. (Regarding whether it was frequently handled on checks, so that I did not know whether the man had actually paid his note or had renewed it with the American National, or not) I don't remember how these transactions were, anything except I know that it had to be one way. I couldn't have balanced up my books unless I had something to show for it. All these notes were held by the Commercial National until they were paid or taken over in some way by the American and if the American took a note in their part, it counted as paid on our part and it was marked paid on the loans and discount and was paid so far as the Commercial was concerned, and until it was paid either in cash or by being taken over by the American National Bank, it was
696 not paid so far as the Commercial was concerned. It was still carried separately and apart from the assets of the American, in the part set apart for the Commercial. I handled it. I don't know who I was employed by, both of them in a way, it was turned over to Hansell Hillyer, and Karsten was taking it out all during the day. I was employed and paid by the Commercial, but the vouchers were O. K'd. by the American, and charged to the Commercial on that same account on the General ledger. Karsten and Hansell Hillyer

both worked, but not at the same time. Hillyer was first and Karsten afterwards. They were not paid by the Commercial National, I never paid them anything, I was the one drawing the checks. I suppose they were special employes of the American National Bank to assist in handling these affairs of the Commercial National, and the American was evidently paying them, as they were not paid in the same way I was. I don't know anything about the rents of the Commercial National Bank Building. I remember sending our collector up there once or twice. I don't remember what became of that, I don't know whether it went to the credit or not, I suppose that cash was handled like any other cash of the Commercial National Bank. I don't remember how the expenses of the Commercial National Bank Building were paid after August 1st. There are not but two of the expense vouchers I signed and the rest were either signed by Mr. Souder or Mr. Lewis or myself. They cover the expense of the building, laundry and such as that, gas and water and repairs, any expense was paid up there by vouchers drawn on the Commercial National Bank. Any of the expense vouchers that we had drawn were on that form. I don't remember whether those items were still charged to the expense account, I haven't looked it up, I can look on the books, I imagine it is kept the same way on the books. The building part was not charged to building account, but to expense account of the Commercial and not the American. I don't know whether the rents we got were credited direct or not, as I did not handle the rent part. I did not assist Mr. Lewis very much after the rush was over, in collecting from the various people who owed the Commercial National Bank,

697 I first went out two or three times, I think; about that time Hansell Hillyer came in and

took that over; all of my work was in the office. I kept all of the books, but did not make the reports to the Comptroller of the Currency during the time I was there. Mr. Woodward had charge of that, I might have seen a man bring the money in there in the morning, he would make out the reports in the afternoon, and Mr. Woodward was also the one to make out the quarterly reports that were sent to the Comptroller at Washington, and I did not have anything to do with that either. Whether Mr. Lewis wrote a good many letters the two months while he was there, to people who owed the Commercial National Bank money; I think he was doing all he could to collect all these papers; but I don't know so much about the letters he wrote, I suppose he did write them. He had a stenographer Miss Durham, who had her office on the top floor of the American National Bank, and she was one of our employees. I don't know whether Mr. Lewis was dictating to her or not, her office was upstairs. She took, I think, Mr. Scott's and Mr. Hillyer's and in fact all of their dictation besides Mr. Lewis' as their stenographer was out at the time. After Mr. Lewis left the Commercial National she still stayed in the American. She went down to the American the same time we did, after the American took the Commercial she stopped work August the first. I don't remember off hand how long before I quit paying her like I did myself, Mr. Nat Lewis and Woodward and all the rest. She was working there when I left, and I think she wasn't drawing pay from the Commercial then; I think the vouchers will show that I was the only one getting a salary from the Commercial. I don't remember her writing letters for Mr. Lewis; I have seen her time and again go in the office, and go to Mr. Scott's desk and take dictation and go back out; I suppose Mr. Lewis also gave her his dictation.

The other lady that worked there for the American also took Mr. Lewis' dictation. During the time that Mr. Lewis was drawing a salary and staying at the bank, I was acting under his direction, Mr. Taylor's and Mr. Scott's, and any of them that told me to do anything; Mr. Hillyer bothered me more than anybody else; he was butting in there every five minutes about something. I would take directions from Mr. Lewis,

698 at that time, as well as from any other officer; they all told me different things to do, and I did whatever they said do. The book that you showed me is the Domestic Tickler of the Commercial National Bank, and began on August 1st, 1914. The book was used more as a memorandum to keep up with the papers that came due each day, then marked on the other book Loans and Discounts. All the notes held by the Commercial National Bank which matured on August 1st, 1914, are supposed to be shown on that book, then the next page would be all the papers that matured on the 3rd, 4th and 5th and so on. The book shows the collection teller, and the discount teller what notes to get out that day and it shows what particular notes he must tickle a man about on that particular day. The Paid entered on this book opposite Notes, indicates that the note was paid on that particular day, the day of the date at the top of the page, but I did not even keep that book; I know that is what it means; it says, Paid, and it was evidently paid on that date. I don't remember anything about the notes on the left hand page in favor of the Commercial National Bank, I think the book was kept page by page; I never did keep that book, but if is in my writing, I was just keeping it, that would mean that these notes were paid on that day, started on August 1st, skipping Sundays and Holidays, it runs right along every day, and opposite the

note is the entry, paid, when the note was paid. I have footed up at the foot of the page or at the end of the column, the total collections of notes for the day, and at the end of the days business, the amounts collected on these notes would be turned over to the paying teller and his total would be taken into the American National, his total would not show in the book, and all the totals from all the tellers in there went in one total, and anything paid out would be deducted. If he deposited with the American, his deposits would be made up with these various other items, turned into him from various sources. You said the money collected in did not go to the American the first two or three or four days, I don't know whether he paid it out or not,

699 for a time he was paying a good deal through the window. There is two and three to this book—I put this one down too, Mrs. Polhill, that name too, payments were made on these notes every day. Those entered at the bottom of the column, were notes that were paid on that day, I don't mean due on that date, it means paid on this date. If you had a note due August 1st, and it was paid on August 1st, but paid on September 1st; it would entered on this up here September 1st and marked paid on that day. The notes were marked paid on this book here by me, any note that was paid up to the time I left there, was put in here paid, and then the net results of the days operation was the amount turned over to the American National Bank, the amount deposited, I don't think we kept any cash after a short while; anything collected in was deposited each day, and after the first two or three weeks we did not keep any cash on hand, as Mr. Hillyer made us stop keeping cash and wouldn't let us bother with cash. On December 10, 1914, I made that entry for that settlement. It reads,

"the entries below are an explanation of the Security Investment Company notes paid above, the notes above, paid through settlement as follows, the Georgia Pulp and Paper Manufacturing Company; November 4, 1914, $3834.14, amount interest $30.58; the Cocoa-cola Bottling Company, August 6, 1914, $5000, interest $140.00; Beechwood Farms Company, October 27, 1914, $5000.00, interest $48.89; Beechwood Farms Company October 20, 1914, $4000.00, interest $45.34; Beechwood Farms Company, October 20, 1914, $3500. interest $39.66; Beechwood Farms Co. October 19, 1914, $2178.20, interest $52.19; Beechwood Farms Co., October 17, 1914, $8320.00, interest $99.94; Beechwood Farms Co., October 14, 1914, $898.84, interest $11.38; These notes totaling with interest $33,172.32, are accepted at par by the Commercial National Bank, as difference of $50.00 exists between this total and the total of notes paid above a debit to losses has been made for this amount. As collateral to the above notes accepted by the Commercial National Bank, the following notes are received with the guarantee of the Central Trust Company that as much as $44,000 will be realized therefrom. (These notes total $36,735.61." There is a list of notes that were accepted under the guarantee of the Central Trust Co., amounting to $36,725.61. The other memo-
700 randum there reads "The above transaction is fully covered in return contract between the Commercial National Bank, The Central Trust Company, the Continental Trust Company and T. C. Parker, dated October 24th, 1914, a copy of which contract had been delivered to each party hereto". When I said "Returned contract", that is in a certain contract. I continued to make those entries of payment all along through December, that is mine there. I marked some where

there 'p. t.' I don't exactly remember what I meant by that, but I think it meant 'paid in part.' I meant paid balance when I marked 'pd. bal.' I left there December 31st. The memorandum that says I turned the books over to Mr. Karsten was written by Mr. Karsten, and Karsten was supposed to take it up when I left. I guess the same method of keeping the books continued along in January, as I see them marked paid that way. There wasn't so many of them aft[illegible] I got out of 1914, and naturally most of the banks [illegible]otes would mature in 1914. I remember most of their notes did mature prior to that time. I don't see the Loan and Discount Register. The numbers on the notes that appear on the Tickler I got from the Loan and Discount Register, and was put on the note when it is entered on the Loan and Discount Register from the Loan & Discount Register. I think when the loan was taken it was entered on the Loan and Discount Register showing the name of the maker, the endorser of any, or whatever security it has got, the date of the paper, the amount of the paper and its maturity and then I think the number put on it, and it is put on the ledger and also this book, the Loan and Discount Register. I don't remember whether the dates of the payment were put on there or not. I think the way it is, when the note is paid, we take a runner stamp and stamp on there the date it is paid with an ink stamp pad, opposite his name on the date of payment. I think, when I left, these notes marked paid all along through 1914, I stamped on the Register on the same date they appear paid on this Tickler. I had everything posted up when I left, and left everything cleaned up to date that I had anything to do with. The notes were all over the Bank, in the vault and in Mr. Hillyers office, and Mr. Taylor

and different ones would come around there
701 and get them every day and at night I took the ones I had and put them back—and some of the notes I would never see any more. They were kept on the Commercial books that I had around there, but were never kept on the American National Bank books, not that I know of, I was keeping that part of the books myself, where those notes were.

Re-Direct Examination.

I made the entry of December 10, 1914, in regard to the Beechwood Farms and others, I don't remember who told me. I don't know whether Mr. Lewis told me to or not, he didn't have anything to do around there then, he wasn't working there at that time—I don't know whether Mr. Hillyer or Hansel Hillyer or who told me to. Cecil Thorpe had charge of the collections referred to here, up until the time he left, and it was turned over to Hansell Hillyer to collect. The same method of handling and entering them there was kept up all the time I was there; and as soon as the collections were made they would bring them to me to make the entry up to the last of December, I did not go back. There was no difference in the handling of these notes beginning August 3, 1914, and from that time up until August 12th, or from August 12th, to September 30th—and the books were kept right straight on through. I don't know about the very last part of that time, but I know when I kept it there wasn't any change, but whatever I left them was handled the same way by Mr. Karsten. Mr. Karsten did not have anything to do with the Commercial National Bank, but was connected with the American National. If the American National Bank had purchased the assets of

the Commercial National Bank, with the incidental duty of liquidating the Commercial National Bank, and the obligation to pay over to the shareholders of the Commercial National Bank any excess of assets over liabilities, I should think it would have to be done just like it was, I don't see any other way they could keep a record of the transactions. After August 1st, I was sent around there to work under American National Bank officials, and I was told that I was going around there permanently with the American National Bank, and I went down there with the understanding
that I was to go to work and be with them
702 permanently and Mr. Lewis was to be Assistant Cashier. Practically two thirds of Mr. Lewis time was taken up with Mr. Taylor on and after August 3rd, 1914. I don't know what he was doing in the office there. He went out of that office and would come back where I was and tell me what to do. Regarding what was stated in the advertisement of the American National Bank on August 2nd, 1914, and on August 3rd, 1914, that a consolidation of the business of the Commercial National Bank in Macon, and the American National Bank had been effected on that date, and that the money had been transferred to the American National Bank, I say that the money that was being paid out was the money of the American National Bank, and it was necessary for the American National Bank to have the money. The attitude of the bank doing a banking business, the deposits would not be discouraged. No new loans were made after August 3rd, or on that date that I know of. A bank doing a banking business with a capital of $300,000 make loans every day. Speaking of the amount of money handled there being deposited with the American National Bank as they came in; a bank in the City of Macon would not

deposit all its money with another bank in the same city, if they were doing an ordinary banking business. If a note was renewed it would be marked paid on that date in the tickler, if it was paid any kind of way—it would not necessarily mean it was money—it could have been a new note. A note would not be marked paid in this book unless it was closed as far as the Commercial National Bank was concerned. Regarding the case of a great many notes that a corresponding loan was made by the American National and the same debtor to the same debtor, and whether it was closed out as a proper transaction without handling the money at all, I don't know how that was worked; of course, I know it was worked in some way like that. If a man went around to the American National Bank, and they took his paper, I don't remember whether they gave us a check for it or what, if it was paid it was marked paid on the books, that meant the note was satisfied, paid in some way; if it was by new note that was the
703 American National Bank note. When a note was paid in that way, I don't remember whether they credited the amount on the back of the note if it was not paid in full or not. Regarding whether or not the records kept there on and after August 3rd, 1914, were such records as would necessarily be kept if the American National Bank had purchased the assets of the Commercial National Bank, with the incidental duty of liquidating the Commercial National Bank, and with the obligation to pay over to the shareholders of the Commercial National Bank the excess of assets over liabilities, or whether it was necessary that some such record of those kept there should be kept, will say at the time I left there, those books would show—they could look back on each day and find out how much money had been paid out on the different notes

by them—by that little statement book; I kept it each day and turned it over to Mr. Hillyer or somebody each night, and they could tell how much money was still out. Those books were a recapitulation of the whole business. The only practical way to keep up with the whole business, with the obligation to pay over whatever was realized from the assets of the Commercial National Bank in excess of the liabilities, to be paid to the shareholders of the Commercial, was to I think, keep a detail of the separate transactions of the records as they were and keep a recapitulation of it on the statement book. Mr. Hansell Hillyer had charge of the notes that were issued originally to the Commercial National; the notes were around there and whenever they wanted them they would come around and called on me for any note they wanted. In case of loans when notes are put up as collateral, the collateral itself was kept there, and in case of an ordinary loan where a man puts up collateral the bank of course keeps the collateral. The daily checks that were given by Mr. Lewis to make up the aggregate of the days items was a proper way in order to keep track of the income and the outgo in the process of liquidation of the bank, as it saved trouble and time and gave a record of exactly of what was paid out that day, and how many checks were paid on the Commercial's books. The Domestic Tickler
704 was in the possession of the Commercial National Bank on August 1st, 1914, and the other records in the main were there too. There was good deal of room left in these records before. In order to keep track of the liquidation with a view of paying over at the end of the liquidation any excess of assets over liabilities to the stockholders of the Commercial National Bank, if these records had not been used to keep track of it, it would have been necessary to buy

other similar records for the purpose or do something of the sort, if they had not had these records they would not have known how they stood at all. They would have to have been practically the equivalent of these or something of the sort. If those had not been used by the Commercial before, it would have been necessary to buy something to keep the record in. Practically the same records would have to be kept in order to keep track of liquidation with the ultimate view of paying over the excess of assets over liabilities to the shareholders. When I said to my recollection that one of the former clerks of the Commercial National Bank went to the Clearing House one or two days, any check drawn on Saturday would have not hardly had time to get to the Commercial on that day, August 3rd. When they closed they had to be cleared on Monday and any check coming through the mail could not have gotten in until Monday. I don't think I had anything to do with the expense vouchers at all until Mr. Lewis left, and of the expense vouchers that I have examined I find that I had nothing to do with any of them except two of them. I have not examined any of the expense vouchers for items accruing after August 3rd 1914, except that one I saw which had Mr. Scott's O. K Speaking of accounts for the keeping of the Commercial National Bank Building after the American National Bank had taken it over on August 3rd; if the American had an obligation of liquidating and handling the affairs of the Commercial with the duty of paying to the stockholders of the Commercial the excess of assets over liabilities after deducting the cost, the expenses of administration it would have been necessary to keep an expense account for the expenses of handling the property. If I had not kept it on the regular expense book, it would have been necessary to have kept

some other way, so you would tell how much you had paid out.

705 Re-Cross Examination.

By Mr. Park.

Those are the Clearing House checks drawn after and on August 1st, here is one on the 1st, one on the 6th, one on 4th, one on the 7th, and one on the 8th, the 8th is the oldest one. The clearings and the going to the Clearing House was kept up I thought for two or three days—I don't remember; and that one dated the 8th, is the oldest. It was my understanding from Mr. Lewis, when I came down to the American National Bank, that he, Mr. Lewis, was going to be Assistant Cashier. I don't know what he was, whether he was assistant cashier, of the American National Bank or not, up to the time he left. He was in the American National Bank, at different places all of the time; I didn't know whether he was assistant cashier or not, as I never saw him sign anything for the American National Bank as assistant cashier. I never had that information from anyone else in regard to Mr. Lewis being assistant cashier, except from him, and that was Saturday, August the 1st; and sometime the first part of the following week he told me the same thing again. I never was actually engaged by any officer of the American National Bank; only I did work for them at different times while I was down there; I had nothing to do with the American National Bank's affairs at all, and continued drawing my salary just as I did before, until I left there December 31st. I never had any contract with the American, made by any officer of that bank. Regarding the Tickler, the impression I got was that when a note was marked paid on this tickler, that

it was paid so far as the American Bank was concerned; and when it was marked paid on the bank, so far as the Commercial National Bank was concerned, it was closed, and whether or not the party owed the American National Bank was a different thing. At the end of each month, I was furnished by the American National Bank with a statement of the account of the Commercial National Bank. Those accounts with the reconcilement sheets were in the same form that were used with any other banks with which the American National had accounts, the statement form used in turning back checks—like balancing the books—hand back the checks with this statement and the reconcilement sheet was with it, and the balance sheet showing how the account stood. I am pretty sure that that was done the entire period, the whole time I was there, and it was
706 done for several months. I had nothing to do with the transferring or checking out of the balance of the Commercial National Bank with particular banks in New York or Baltimore. That is the draft register of the Commercial National Bank. On that particular, is the draft drawn on the National Bank of Commerce of New York. This book would not show what the balance was. The last check is September 15th, 1914, no it is—(blank) 15 up here—it is September 15th up here, but it is just blank September there. It is in favor of Leon S. Dure for $147.84 and leaves a small balance of $2.34, that was drawn out in favor of the American on the same day, but I do not know anything about the transaction. That is Mr. Souder's handwriting. The Commercial National Bank had accounts with quite a number of different banks. I had nothing to do with the balances that were checked out; I know we started right away to closing out, on Monday when we went down there. We were only supposed to keep

that until we got the accounts balanced up. If a bank discounts a paper, or buys a paper, it puts it on its own books ordinarily. If a merchant came in and discounted the notes of fifteen or twenty different people, or if the bank bought them, it would enter them on its own books. If a merchant deposited paper with the bank to be held as collateral with his indebtedness, I think they have a collateral book to keep a record of the different collaterals; I have never had anything to do with the collaterals. I don't think they would be entered on the loan and discount register. If it was entered at all, it would be on a collateral book—a separate book for collateral belonging to the other people; either that or in an envelope; so you could tell what papers were put up as security for the money he got. If the bank holds collateral for an individual it undertakes to collect that collateral when it comes due; but I have known it the other way; when a paper comes due the people would get the notes and collect them themselves, and come back and pay their notes, sometimes it was handled one way and then the other. If the bank owns the papers it always puts it on its own books, as that is the only way to keep up with the assets, by putting it on its own books. (Regarding
707 the question put to me by Mr. Hall—If this contract was such and such a thing if I would keep a certain set of books, or this or that would be the proper way of keeping them). The contract was that the American National Bank was lending the Commercial National Bank the money to pay its depositors and its bills payable, and was to hold the securities of the Commercial National Bank as collateral for the debt, to keep a record of it somebody would have to have done just what was done to keep a record of what was paid out. If the American National Bank had bought

the notes of the Commercial National, it could have entered them on its own books, it would have been a whole lot of unnecessary trouble—and expense to start up a new set of books; and do the same thing over that was already done on these. If a bank bought a note it would put it on its records or keep a record of it; they have the records around there already put down; what has been paid and what has not been paid, the whole thing; and to start all over and keep a new set of books would be a lot of unnecessary expense and a lot of trouble. If the American National Bank was lending money to the Commercial National Bank, and holding these assets as collateral, having the obligation on it to assist in the collection of them, of that collateral, acting as liquidating agent, to keep these matters as they were kept would have been one proper way to keep these matters, and there is nothing in this transaction that indicates that that is not the way it should have been kept. I cannot suggest any other method that would have been as good as the method adopted, assuming that was the contract; I think the only way to keep a record of it would be to have done like they did it. There was no difference in the handling of the account between the Commercial National Bank and the American National, so far as deposits and checks were concerned; we kept a regular account; the account they ran in this ledger was just as I told you, checks and deposits; and checks made would finally come back and be credited, and a good many come in and deposited to their account, and a record was kept so we could tell what became of the money. We kept that account

708 in the same way, on the same books, that we kept our account with the National Bank of Commerce of New York, a regular account on the general ledger. There were checks drawn against the account

but I don't know whether we put it on the register exactly like we did the National Bank of Commerce. The account of August the 3rd, the American National Bank written at the top of the page in E. N. Lewis handwriting shows drafts drawn by the Commercial National Bank on the American National, checks, they are all entered along in regular order, just as we kept the account in any other bank, that is the way they kept them after that; put them on this book; instead of having any drafts with any other bank, in other words we took the book that we have been using with the National Bank of Commerce and used it for the American National Bank. The account appears on the general ledger in exactly the same way of the account with all other connections, the only difference between it, the Commercial and the American did business in the same room, and the National Bank of Commerce did business in New York.

Re-Direct Examination.

I never heard of two national banks doing a banking business in the same room. We immediately discontinued that register of the National Bank of Commerce of New York, and devoted it to the checks drawn on the American National Bank in that process of accounting we were running. If there had been a contract such as I have described, for the purchase of the assets of the Commercial by the American, with the obligation to account for the over-plus to the shareholders of the Commercial it would have been necessary to keep track of the amounts paid out by the American National Bank in the work of liquidating the affairs of the Commercial National in the manner such as is shown on that register. In the event that the

contract was such as described, I think that would have been the convenient way to keep those items. In regard to those Clearing House checks indicate whether or not they indicate one of the regular men of the American National Bank went to the clearing house, and cleared in the name of the Commercial National Bank or whether

709 one of the clerks connected with the affairs of the Commercial National went to the clearing house, I couldn't tell; that is a draft drawn on the different banks by the clearing house. Regarding the monthly statement according to my recollection, I didn't get one until the 1st of September, that is the first one I received, the 1st of October, was the same kind of statement, and so was the 1st of December. In order to have its accounts, that the American National was keeping in this administration of the affairs of the Commercial National, reconciled and balanced with the records over on the administration side, it would have been necessary to have had that same statement made monthly, or something equivalent, so as to check any possible errors, month by month; the statement was returned just like a regular bank account, so we could verify it and see if there were any errors. If there had been a contract such as you have described, with transactions running through every day, I should think it would have been proper and necessary to have had monthly balances between the American National Bank proper, and the liquidation or administration forces in that bank, at the beginning of each month, covering the previous month, to see that there were no errors, as I don't see how else they could have kept up with it. Regarding the difference in this account of the Commercial National with the American, on the records that had been previously used by the Commercial, I don't think there was any other bank in Macon on

that book, but the Commercial Savings Bank might have been, but not on and after August the 3rd, 1914, unless the Commercial Savings had a balance account; that would have been the only one.

710 American National Bank,
vs.
Stockholders Commercial National Bank.

Section 5.

L. O. BENTON testified:

Direct Examination.

I live at Monticello. I was a Stockholder and Director of the Commercial National Bank. The Commercial National Bank went out of the banking business on August 1st, 1914. Shortly after August 1st, 1914, I had an offer for a hundred shares of my stock in that bank. Regarding what I did in disposing of that stock and having it transferred, I had an offer I think about August 5th, 1914. I think I was in Macon about August the 7th, and I endeavored to have the stock transferred and to ascertain about the price of it. I spoke first to Mr. Lewis and he stated that I could not transfer it, that the bank had closed, and I spoke to the officers of the American National Bank and they declined, saying it could not be transferred on account of the bank being out of business. I had a talk with Mr. Taylor after August 3rd with reference to the personel of the force that they were using in liquidating the Commercial Bank, but I don't know whether I took the matter up with him on the 7th or the 12th as I was here

on both of those dates, but I think it was one of the two. I stated to Mr. Taylor that inasmuch as the Commercial National Bank was closed up, that the papers were somewhat mixed up, that I understood that practically every bank in Macon held notes on the same papers and the same collaterals, and that I preferred for
711 the parties who had been in charge of the Commercial National Bank not to be in charge of these notes and assets of the bank and he told me that he had charge of the matter and assured me that what notes he got hold of would be handled in the proper way, and that it was impossible for him to get along without some assistance from the force of the Commercial National Bank; that he had to depend on them for information, that they knew nothing about some of it, but that he had them employed for only about thirty days. I would not say that I made a formal demand for an examination of the books that had formerly been kept as bank records by the Commercial National Bank, but I made a request that they, the American National Bank allow me to have an audit made of the books of the Commercial National Bank, and I wanted to know whether or not the American National bank would stand for the expense of that audit; and he said they would not, that he had employed an auditor or that he would employ one, so I took the matter up with the board of directors and a number of stockholders, but I did not receive any encouragement for either. I could not repeat verbatim what was said, he, Mr. Taylor and Mr. Hillyer, stated that the Commercial National Bank had no books there and that I had no business there and that they were the property of the American National Bank and that they would not give their consent for the books to be audited unless they knew who the auditor was, and what I wanted

them audited for. I presided over the meeting of the stockholders on August 12th, 1914, but the minutes were never submitted to me for approval signature, and I never read the minutes only a part of them to day, and I have not read them all yet. What purports to be the minutes of that meeting indicates a statement made by Mr. W. T. Anderson to the meeting,
and the minutes represent Mr. Anderson as
712 saying in the course of that statement that
the venture of the American National Bank in taking over the assets of the Commercial National Bank and agreeing to pay the liability of the Commercial National Bank was backed by the assets of the Commercial National Bank, and by the individual liability of the stockholders of the Commercial—I do not recall Mr. Anderson's having made any such statement as represented above at that meeting. When the contract between the banks were read I recall some discussion of the provision that made reference to the stockholders' liability. My recollection of that was that Mr. Lane read the resolution, and that I called his attention to it while I was in the chair—there seems to have been no discussion,—I called his attention to the double liability clause of the stockholders, and Mr. Lane stated that he wanted to explain that; but I don't remember all he said about it, but he did say that it had nothing to do with the contract,—that if we were liable we would be liable any way; and if we were not liable, we were not. It was after that statement by Mr. Lane that it was voted. I was not in Macon on August 1st, 1914, I saw the advertisement by the American National Bank and the Commercial National Bank, and subsequently received a notice of the stockholders meetings indicating the purpose for which the meetings were to be held. This is the notice I received of the meeting to be

held on August 12th, 1914. I received this by due course of mail, and it is identified by my signature. I am not positive whether I received a similar notice of the meeting of August the 12th, as I did not find it in my files, but I won't say it has been lost, if it can't be found in my files, as there have been some papers taken out of my files in reference to this case, and this may have been taken out also.

713 I expected no other business to be transacted at this meeting except the consolidation of the Commercial National Bank with the American National, and the incidental liquidation of the Commercial, which is provided for in the notice. There was no other business so far as I know of that was transacted, except the carrying out of the proposition indicated in this notice. I was not trying to evade any assessment against the stockholders of the Commercial National Bank in my negotiations for disposing of my stock in that bank. It was a bona fide offer of sale. It did not occur to my mind at all— the question of stockholders liability.

Cross Examination.

By Mr. Park:

The offer to buy the stock of the Commercial was made from W. M. Davis, a broker in Macon. I do not know who made the offer but it was on August 5th. The offer was in writing and I have it with me. That is not the only offer I had, I had several of them, but I haven't them with me, indicating paper. I took that to be an offer for a hundred shares that is a firm offer. That says, since writing this letter I have just had conversation with a party with whom I can probably place one hundred shares at 40, advise me if you care to sell, that is as firm an offer as you could ever get from

a broker. That is one of the offers I had reference to. On August 7th I applied to Mr. Lew, and to the officers of the American National Bank, both Mr. Taylor and Mr. Hillyer to make the transfer of my stock and they advised me that under the conditions then existing the stock could not be transferred. I did not offer any particular number of shares. I think I owned individually eleven or twelve shares, but I did not specify any number of shares. I brought the certificate the 7th. I won't say that I exhibited them. Subsequent-
714 ly in October or November I mailed them the certificates of stock to transfer. On November the 27th I wrote the Commercial National Bank that I was enclosing the stock to be transferred. I couldn't swear positively that the letter you hold is a copy, of the letter which I received in reply to that letter, but I wrote them a letter enclosing certificates, I looked for this copy, but it was out of my files, I wrote the original letter. I neither admit or deny that that is a carbon copy of the reply to that letter, but I wrote a letter sending in stock in November and received a reply which I could not find in looking through my files, Colonel Johnson had my files in this case, and he might have taken it out. I will produce the letter, if I can find it. I made so many requests for audits of the Commercial National Bank, that I could not tell you the dates of them, but I requested it from the time that the bank was first taken over by the American National right on through. I had been under contract to audit that bank myself, and for several years been paid a stipulated amount per annum for this service to keep the bank audited. I was a member of the board of directors of that bank all the time, and I think I made a request for an audit at the stockholders meeting over which I presided, but I do not remember what dispo-

sition was made of it. I think the subject was brought up in the stockholders meeting in an effort to get the stockholders to pay for an audit, and it was declined on account of the cost, expense and so forth. I think that was the meeting of August the 12th at which I presided. I made this request and it was declined for the reasons above stated. I afterwards brought it up two or three times at the meetings of the directors of the
715 Commercial National Bank and the proposition was voted down by the directors of the Commercial every time it was brought up. They would discuss it every time it was brought up, I would not say that they voted it down exactly, usually the subject was brought up about the cost and who was going to pay for it, but I don't remember whether they ever authorized the audit to be made or not. A committee was appointed by the stockholders, of which I was a member at the meeting over which I presided on August the 12th, 1914, but I don't think it was a liquidating committee. I think the meeting of September the 30th ratified the meeting of August the 12th. We had a long lengthy meeting on the 30th, I don't know what all was transacted, a good deal, but I could not say if they ratified the meeting of August the 12th, so far as the appointment of the committee and so far as everything else that was done at the first meeting. I repeatedly brought up, as a member of the liquidating committee, or the stockholders committee whichever you may call it the question of the audit of the Commercial National Bank's affairs, and I don't think they ever authorized it. When I applied to Mr. Taylor of the American National Bank, I think he told me that Alonzo Richardson & Company had already made an audit, or were then engaged in making the audit. I don't know whether he said anything about charging against the

Commercial National, he said that he thought an additional audit would be unnecessary. I don't remember whether he said it would be unnecessary expense. He said he was having an audit made, but this was not done. The stockholders committee had a statement, but I don't think Alonzo Richardson himself would admit that to be an audit. What I wanted was a different thing
716 than from just a statement of the condition of the bank, I wanted to audit the books to find out what we had. My first purpose was not to get evidence to prosecute the officers of the bank, but to see what we had, what the stock was worth and sell it. I could not find this out from the audit of Alonzo Richardson Company because Mr. Cobb told me I think that was about 110, and the brokers were offering about 40 to 60; there was a wide difference in there, I wanted an audit to see what I had and what it was worth. I was not chairman of the meeting of the stockholders meeting of August 1st, but was chairman of the meeting of August the 12th. I think Mr. George S. Derry acted as secretary, but I do not know him. At the meeting held on August the 12th Mr. W. T. Anderson did not make a statement as to the circumstances under which the contract between the two banks were worked out. He made a statement to the effect that the examination of the assets of the Commercial National Bank by the officers of the American National Bank, and the valuation which they placed on the property, and things of that sort. I do not think Mr. W. T. Anderson made any such statement at that meeting as reported by the secretary, and appearing in the minutes such as "But the assets over the liabilities figured, according to my recollection, about $443,000.00, and that was the margin on which they took it, backed by the additional liability of the stockholders". What brought

Mr. Anderson to his feet was an effort on the part of a number of stockholders to have the officers of the bank make a statement as to its affairs. There no officer responded, and Mr. Anderson got up and made a statement as to the transfer of the stock, and what he knew about the bank. Mr. Anderson did not refer to the transfer of stock, or the transfer of
717 the business at all, about all Mr. Anderson had to say was about what he saw in the bank, and Mr. Dure and the National Bank examiner; there was something said about these three, and some papers coming up. I don't remember him saying anything about the stockholders double liability or anything of that kind. Mr. Lane read the contract between the two banks and also read the resolutions which had been passed by the board of directors. The stockholders voted to approve the action of the board of directors when the resolutions were read, and discussed a part of it before voting. After it was discussed it was voted on and ratified, and the contracts were also ratified the contracts after a full discussion of the contracts by the meeting, that is they discussed it some and Mr. Lane did most of the discussing. One of the things discussed was the paragraph in the contract which—said that nothing in the contract should relieve the stockholders from their double liability, in the event it should be necessary to have recourse on the shareholders if there should be any deficiency in the assets of the Commercial. Mr. Lane's attention was called to that paragraph which would not make them liable unless they were liable any way. I told him I wanted it stricken out and he stated that the matter had been discussed with you and you were not inclined to leave it out of there, and wanted it in there, but that it would not effect the contract whether it was in or out; if we were liable,

we were liable any way. I think he quoted you and Mr. Taylor on that—something Mr. Taylor wanted in there, or something, I would not undertake to swear to his exact words. His explanation was that while he did not want it in there, both Mr. Taylor and Mr. Park insisted on it being in the contract; that while it was in there, he did not think it made me liable and that you did not think so either, and that you did not think that it amounted to anything. I don't
718 think he said that you insisted on it being there, I think he said Mr. Taylor. My recollection is that he said he insisted on leaving it out, but you would not agree to it, and at that time I thought it was a stereotyped form of resolution sent out by the Comptroller. I wouldn't swear that I haven't got that confused with the stockholders resolutions, without refreshing my memory up on the records. The stockholders did ratify a printed resolution which came out of the Comptroller's office, used to put the bank in voluntary liquidation. ..... It isn't true that in addition to ratifying that resolution I also ratified the contract, and I knew the contract was not stereotyped. I knew that the contract was prepared for this particular occasion, but I thought we were ratifying the original trade, I did not know that there was anything new in it. I think we did pass a resolution putting the bank in voluntary liquidation, but I am not positive, I think a resolution like that was passed on the 30th. I don't remember that we passed such a resolution on August the 12th. I haven't any idea how much stock of the bank was represented at the meeting of August 12, 1914. I think that more than two-thirds of it was represented there, by proxy and all. As chairman of that meeting I did object to some of the business that was brought before that meeting, as not being within the terms of the

call, and I think I was the man that called Mr. Lane's attention to that resolution. I do not recall anything in the minutes to indicate that I made any objection at all, but I did not read the minutes clear through, examining minutes. No, it does not say so. After reading the above minutes I do not see where it says anything in the minutes to indicate that I made any objections to any transaction that came before that meeting, neither do these minutes show anything about the resolution there being discussed at the meeting
719 but it was discussed. The minutes which I have just read, while it does not show all the discussion, it shows a part of the action taken by the stockholders at that time. The records have down there what was said—something that was said by W. T. Anderson, and I fail to recall that anything was said by any one relative to the resolution as to the guarantee of stockholders. I attended the meeting held on September 30th, and I think Colonel W. T. Anderson was chairman of the meeting, but I do not recall who was secretary. Referring to my statement made a while ago that everything had been done at the previous meeting —the August 12th meeting—was ratified, according to my recollection, that was the purpose of that meeting, it was called for the purpose of ratifying it, I have never yet myself admitted that that meeting had two-thirds of the stock voted. I attended the meeting. With reference to the following resolution offered: "Whereas, the board of directors of this association by resolution adopted on August the 1st, 1914, transferred and assigned to the American National Bank all the assets of this association as security for the liability of this association which were assumed by the said American National Bank, said resolutions being passed, in contemplation of the voluntary liquidation of this associa-

tion under the provisions of section 5220 and 5221 of the United States Revised Statutes", this last meeting had a good deal of discord in it, but as to whether they voted the number of shares to carry those resolutions I am not prepared to say. I remember a resolution was offered and discussed, I think they were the same resolutions in that meeting as the other, but I am not sure. I do not know as I could recall the vote on that particular resolution, but I think I voted against it, and also voted the stock of L. O. Benton & Brother against it as well as my own. I don't know whether I voted against it the stock of the Southern Securities & Financing Company or whether Doyle Camp-
720 bell, the representative of the Southern Securities & Financing Company voted it against it. L. O. Benton was president of it, I was. I do not recall whether I voted that stock or Campbell, but it does not matter which one voted it, he had the proxy. I could not positive say whether there was offered and passed a regular printed form of resolution placing the bank in voluntary liquidation. I voted against several resolutions, but I don't know whether I voted against that particular one or whether I voted the stock of L. O. Benton & Brother and of the Southern Securities & Financing Company or not. I think I voted against everything that was proposed. In reading over the minutes just handed me, I find that I was not chairman of this, I think I have read the resolution you called my attention to a while ago by Mr. A. W. Lane, the attorney for the Commercial Bank and one of its directors, but I have not read the second resolution yet, the resolution for voluntary liquidation. After reading the mintues, I recall the best I can, that they represent the action that was taken at that meeting, but I don't say that represented all the business we transacted, there

was a great deal of wrangling and I don't say that those minutes are full. I don't recall any meetings that the Commercial National Bank directors had during September and October and November or later. I remember of attending the meeting of November the 10th, but it was not called by the officers of the Commercial National Bank, that meeting was called by the American National Bank for the purpose of getting us to ratify some papers, some swap of the Central Trust Company to the American National Bank, that was not a called meeting of the Commercial board, but it was a meeting of the board of directors of the Commercial National Bank, held in the Commercial National Bank
721 building as the minutes represent, there being present apparently all of the board, and the stockholders committee was with the meeting. I was also present at another meeting called at my request two days later at which I furnished a list of loans that I objected to or a list of papers held by the bank that I objected to. I do not recall attending a meeting of the board of directors on December the 10th at the banking room. I do remember making a motion at that meeting that a resolution which had been passed at a previous meeting that the American National Bank pay some fees to Jordan & Lane and—your firm (Mr. Park) be rescinded, and I attended various meetings of the stockholders committee, and participated in them pretty actively. I remember attending a meeting just after the meeting of August 12th, the stockholders meeting, but I do not recall making a motion that a financial statement be requested from the various Mallary companies, and from other indebted to the Commercial Bank. In regard to attending a meeting of the stockholders committee August 28th, at which Mr. Malcolm Jones, representing the Central Trust Company,

as to some paper claimed by both the Commercial National Bank and the Central Trust Company, and some Beechwood Farms bonds, will say that I do not recall the date being August 28th, but I remember the matter being discussed, I can't say whether it was at a regular meeting or where the meeting was. I remember the subject. The following day, August 29th, I attended another meeting, and re-iterated verbally my request of the members of the committee for an audit of the Commercial National Bank's affairs, by the Bankers Audit Company. I had some stock in the Bankers Audit Company, I did not own it. It was organized primarily to credit the L. O. Benton system of banks or to do any other auditing. I remember attending a meeting in which the committee gave directions about the bond of Mr. Lewis, the cashier, directed that the bond company be notified, but I do not recall the date, I think we had the subject up at that meeting which was a committee meeting. I do not remember attending the meeting at which the sale of the property on Forsyth Street, belonging to S. C. Moore was acted on by the committee, along with a good many other things and the sale of the Rice farm, or the matter of the settlement of the Security Loan & Abstract Company matter was agreed, I do remember the questions coming up, but I cannot recall the date of the meeting. In regard to Mr. Anderson making a motion seconded by Mr. Benton, that the settlement under which Mr. J. J. Cobb gave his note to the Commercial National Bank for $8,402.62, secured by sixty-two shares of Eagle River stock and a hundred shares of the Security Loan & Abstract Company, with coupons of the Eagle River Mining Company, this wasn't a directors meeting, and nobody was present but Mr. Taylor, Mr. Anderson and myself, and possibly Mr. Dure at Mr. Taylor's re-

722

quest. It was in the American National Bank. I remember the committee meeting being held at which Mr. Anderson, and Mr. Dure and myself were present, and those subjects being brought up, we meeting about once a week, but I do not recall the dates. I remember the meeting at which the settlement with Mr. W. E. Small, involving the residence on College Street was agreed on and where the Commercial National Bank took the property for $12,500.00 and immediately resold it to the American National for $10,000.00, quite well, and I remember telling Mr. Taylor it struck me he ought to give $25,000.00 for it, because it would I thought make his losses less, for I knew he was going to have some heavy losses anyway. Regarding the meeting in which the proposition came up to surrender some securities that were claimed by the Central Trust

723 Company, I don't know about the wording of my motion, whether I made a motion that no securities which the bank held, whether they had any right to them or not, we didn't know whose stuff it was. I think maybe I did propose such resolution or statement, a National Bank usually holds on to all the securities where debts are outstanding. I think there is a special Act of Congress that gives national banks that right—the right to do that, and the State Banks haven't got it. I remember discussing the Haley matters fully, but I can't remember the date of the meeting. I do not recall the discussion had relative to a suit which had been brought against the Commercial National Bank by Rice & Hutchinson, I do not recall them at all. I understood Mr. Taylor to tell all the papers that the American National Bank held were going to be looked after properly. He did not tell that the American was the liquidating agent for the Commercial National Bank. I don't know that we had elected him liquidating agent.

In regard to the American National Bank being elected liquidating agent at both the meetings of the stockholders on August 12th and September 30th, I understood that the objects of these meetings was to ratify the action of the board of directors. I did not read that resolution, I read down to that, I think at the first meeting. In regard to the American National Bank being liquidating agent for the Commercial, I don't call them liquidating agents, I did not understand that that was their business, and I did not understand that that was the resolution of the stockholders, appointing the American National liquidating agent. I just thought that the resolution was a sterotyped form the Comptroller wanted put through. As liquidating
724 agent it would have been the duty of the bank to have protected those papers, and I thought it was our duty also, we were appointed as a committee of stockholders to look after that. I not only thought the stockholders committee ought to look after that of stockholders interest, I thought it was the interest of all parties in handling these papers that they turn out to the best advantage, and I think it is usually the duty of the a director to look after those things, I think all directors have the same duty. My understanding is that the directors elected this committee appointed by the stockholders to look after these assets and see that they are properly administered. The directors were relieved so far as the stockholders putting an additional check on the matter was concerned. I not only thought they were relieved on account of the above, but of practically all of their duties. I did not think that they were called on for anything except when the American National Bank wanted them to sign some papers or something like that; I thought that was the only purpose for which they were used. The Directors passed

resolutions. The committee would not have a right to do that. I think the directors met from time to time to pass various resolutions more at the request of someone to pass the resolutions, but as to the affairs of the bank I understand that their duties ended, because as they made no loans or had nothing to do with loans or any other of the securities, I thought their duties had ended. They were in the possession of the American National Bank. The American National Bank had the notes, but I did not understand that they were the liquidating agent. I think I voted the resolution
725 naming them as liquidating agent the first time I was in the chair and put the resolution. It carried the first time, and I don't think I voted at all at that meeting. I don't think my stock was voted that meeting., I voted against it good and strong the last time. I was in the chair the first time so I did not vote. Regarding the minutes showing that there were 2818 shares of stock represented, which included L. O. Benton 10 shares, L. O. Benton & Brother 45 shares, and the Southern Securities and Finance Company, L. O. Benton, President, 103 shares, and the resolution under which the American National Bank was appointed liquidation agent being unanimously passed, I was in the chair; my stock is recorded as being present; I did not vote against it, I don't know whether any of my stock was voted otherwise or not. When I came down to Macon on August the 7th, I did not find that the entire organization of the Commercial National Bank was actively doing business in the banking room of the American National Bank. I found Mr. Lewis and Mr. Souder, the assistant cashier there, but I don't know whether the other clerks were down there or not as I don't know them all. I do not recall the receiving teller the paying teller or the collection teller, all that I re-

member was Mr. Souder and Mr. Lewis. I know Mr. DeBorde and Mr. Woodward, but I do not recall whether they were there or not then. I do not remember Mr. Mallary being there, I may have seen him in town, but I do not recall seeing him down there. I understand Mr. Lewis and Mr. Souder, who were down there were employed for about thirty days, but I don't know what these people were doing. I guess the depositors were being paid as fast as they presented their checks by the Commercial National Bank. Those I represented were paid from the American National Bank, by money being transferred from the Commercial National Bank to the American National, and drew checks on the American National Bank. That is the way the
726 money was checked out, I think possible the American National sent us checks asked us to sign it. I won't be positive that I checked it out after I got into the American National Bank, they had some letters that went out that way, instructed you how to proceed. They took care of those checks. You take a bank, any of them, when one buys out or takes over another, it pays its checks, regardless of how they are drawn. I don't know that every single account that was checked out at all, until the latter part of November was checked out by the customer himself drawing his check on the Commercial National Bank, and that it was paid by the Commercial, it was paid by the American National Bank. I suppose; usually when one bank takes over another it recognizes the checks drawn on the other bank. That is all I know without the records. I could not swear exactly about how I checked money.

Re-Direct Examination:

The American National Bank sent me the papers to bring about the transfer of my account down there. I do not know whether I did it as they requested it or not. We only had one account there that came into our own office from the Commercial bank, the others were from Barnesville, but I couldn't swear positively whether I adopted the method suggested by the American National Bank in the letter, in making the transfer or not. I could not swear positively whether or not the means adoped were a formality as far as the transferring of the accounts were concerned as advertised by the American National Bank of the date August the 1st, 1914, and published in the Macon papers one on Sunday, August 2nd, 1914 and the other on August 3rd, 1914—that at that time "The money on deposit with the Commercial National Bank has been transferred to us and we stand ready to pay your checks against same." If it is true as advertised by the American National Bank above, that would transfer the deposit. The matter of drawing any check then was a matter of for-
727 mality to conform with—It would not be a matter of mere bookkeeping so far as the drawing of a check was concerned though it could have been. The announcement would have called for checks to have been drawn on the Commercial National Bank if what was done was in accordance with the request of the American National Bank in this advertisement, announcing the consolidation, that "checks should be written on the blanks of the Commercial National as heretofore until you give directions for the transfer or the depositor make other arrangements." I considered it a consolidation, I thought the two banks had been consolidated on August the 1st, 1914. I did read the

advertisement of the American National Bank that "In order to better serve the business interests and people of this community and section, we are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National of this City has been effected. The assets of the Commercial National have been taken over." I did not hear of any contention that the American National Bank was lending money to the Commercial National. The reason the American National Bank was holding those assets of the Commercial National Bank was because they purchased them from the Commercial.

Re-Cross Examination:

I did not recall seeing you at the Hotel Dempsey right after the stockholders meeting of August the 12th, and discussing with you at that time the contract between the two banks, neither do I recall that I asked you at that time about that clause that provided for the stockholders double liability. I don't know whether I told you that that clause should never have been put in the contract, and I did not want to ratify the contract with that in it. I meant that though, as
728 I did not want it in there. I don't recall that you told me the American National Bank would not take it any other way than with the clause in there, because if there was a deficit of the assets the American National intended to hold the stockholders. I do not recall anything definite regarding a conversation with you at all. I do not remember discussing with you (Mr. Park) anything at all regarding the Stockholders liability clause in the contract. I could not swear positively that the American National Bank wrote me anything or gave me any directions about the transfer

of my account, I did not pay any attention to that. Usually when banks consolidate that way, the other bank takes care of the outstanding checks of the bank it takes over. I am not clear so that I am not positive enough to testify about my statement about a letter the American National Bank wrote me was just a general statement. I had a checking account with the Commercial, it was not an individual account it was a bank account. I had a number of banks that were doing business with the Commercial National Bank. In regards to how any of the accounts were reconciled and colsed out, they were closed up on the 7th of August, so far as we were concerned. I took up the correspondence on the 3rd of August with Mr. Hillyer, when I got that letter I wrote him I would be down on the 7th and I went down on the 7th to see him in regard to the accounts and took it up with the correspondents and moved it all, but I don't remember just how it was done. I took up different subjects with the American National Bank, but not the mere transfer of the accounts though, and I took up the question as to the terms on which they would handle the accounts that had been formerly handled by the Commercial National Bank. I made my own arrangements with the view of moving some—I think some of the accounts maybe were split, possible all of them kept an account there at the bank for awhile. I don't know whether they were not
729 all transferred to the American National Bank, but the American Bank was the people that furnished the money. Some of the accounts were divided afterwards, first transferred to the American; the American National took over all of the accounts from the Commercial. Unless I could get the records from home, I could not swear that I actually transferred these accounts. We just judged that the American was going

to pay the checks and we just checked along on the Commercial. I could not swear whether we actually checked the balance from the Commercial and put it in the American National or not. I do not know how a single one of my accounts were actually transferred from the Commercial National to the American, I only knew that we drew checks right along and in due course of mail we would finally get the check back on the American National.

Re-Direct Examination.

By Mr. Hall:

There would have been no chance whatever, from what I saw of the suspension of the Commercial National Bank and the moving of all of its affairs to the American National Bank, with such acts of control over its affairs as I saw in the American National on August 7th, 1914, ..... to have on August 12, 1914, the Commercial National Bank's affairs withdrawn down there. There was no other reason assigned when I asked about the transfer of this stock on August 7th when I was told that it could not be transferred because the Commercial National Bank had gone out of business.

LEON S. DURE testified:—(Recalled).

Direct Examination.

By Mr. Hall:

Referring to the activities of the committee of stockholders of the Commercial National Bank, I will say that during the time of the service of that committee the officers of the Commercial National Bank did not acquaint me from time to time and at various
730 times that they requested me to convene, with the progress of the administration of the affairs of the Commercial National Bank with reference to amounts paid out and amounts collected. From statements gathered from the officers of the American National Bank will say that only in a general way, in drawing our own deductions, was the committee enabled at any definite period to know what the condition of affairs was with reference to the assets of the Commercial National Bank. The committee did not work at all except what was requested by the American National Bank officers. I did as a member of this committee consider that I had an obligation to continue in this work, without any reference to the matter of liability of the shareholders of the Commercial National Bank. I thought the duties of the stockholders committee extended throughout the liquidation, regardless of the liabilities of the shareholders. Mr. Taylor and Mr. Hillyer, the president and vice president respectively, of the American National Bank, requested me to render services to the American National Bank in this connection. Personally, I was only serving the American National Bank, and also endeavoring to conserve the interest of the stockholders as to any over plus. I still thought that I had an obligation to perform to the American

National Bank, even though it became apparent that there would be no over plus but might be a deficiency.

731 I have made a claim for services rendered the American National Bank and have received pay for that. I could hardly say that at any given time it could with certainty be said what realization there would be from the assets of the Commercial National Bank, for the reason that the Commercial National Bank had among its assets one or two large items that were entirely problematical. They had an item or asset in the matter of the T. C. Parker matters; I know that I at one time considered very valuable, probably worth, Mr. Anderson and I thought, prior to the taking over of the Commercial National Bank by the American National, worth anywhere from Sixty to one hundred thousand dollars, and I think afterwards found to be entirely worthless—I refer to the timber sale; further I knew that the Commercial National had among its assets a good deal of Eagle River stock which I knew was entirely problematical. I mean Eagle River Mining Company. It is true that a number of debtors, and I know possibly one or two, that might have been thought comparatively helpless financially in the fall of 1914 or the year of 1915 and the early part of 1916, have since worked out their business and have come to a prosperous stand. In comparing the prosperity in 1914, 1915, and 1916, with the more recent years of 1918 and 1919, will say that they were two extremes. I never was consulted about the writing off of assets of the Commercial National Bank amounting to one hundred and fifty thousand or two hundred thousand dollars, and I didn't know anything about it until I heard Mr. Anderson's testimony. I remember at a Directors' meeting, I don't know how long previous to August the 3rd, 1914, but I should say within twelve months at least,

the officers of the Commercial National advised the directors that they had received an offer of $75,000 for the Commercial National Bank building, and it was declined. Only in a way I have a recollection that at some one of our meetings when that question came up
of conveying this building to the American Na-
732 tional, Mr. Benton mentioned this instance at
the directors meeting—only in that way could I know of Mr. Taylor knowing that fact, Mr. Taylor was present at the time. If in view of the fact that an offer of $75,000 had been openly made and declined for that building, the American National Bank in its accounting had without consultation taken that building at a figure as low as $40,000—which was a reduction of practically fifty percent as against the offer which was declined, it would certainly have given rise to criticism by the shareholders, this would probably have extended further than the mere difference between fifty thousand and seventy-five thousand dollars, and this was the very reason that the American National Bank officials endeavored before taking over the building to arrive at some plan to avoid criticism. I have no recollection of that sort in reference to the resolution as to this matter under date of July 1, 1916, in which it is provided that the proceeds from the sale of that building shall be credited to the indebtedness of the Commercial National Bank to the American National, although Mr. Mallary states that I was there, I do not recall that meeting. I do know that at various joint committee meetings the question as to how to handle that building did come up, it may be possible that I was there. I had no recollection of that sort of provision of the resolution—referred to in there—providing for a credit of the proceeds of the sale of that building on the indebtedness of the Commercial to the

American National; not the exact verbage: the chances are that I would not have paid much attention to the verbage of the resolution beyond the fact that it was transferring the building at a certain figure. I have examined the contents of the book labele
733 " minutes stockholders' committee". I should think all the minutes are not in there, I make that statement for the reason that we had a great number of meetings, and that book contains so few records of meetings that it does not impress me as being the minutes of all the meetings. Minutes were supposed to have been kept of all the meetings. In regard to a loan to the Central Trust Company which you think are entered on the records after August the 3rd, was closed on Saturday night August 1st, 1914, I handled the preparation of that paper myself.

Cross Examination:

By Mr. Park:

The minutes which I have examined are correct and represent the transactions of that committee for the meetings of which they are the minutes, there was quite a lot of discussion that was not entered on the minutes, but as far as they go, I think they are correct, and represent the action taken by the committee. That is also true of those minutes, those notes that I identified the other day, which are not in the book with my signature on them. I do not recall any other meetings besides those which are not either in the book or in the memorandum which I identified,—I made the previous statement based on the fact that looking over the book the other day there appeared to be so very few minutes in there. I do know that we were meeting so frequently, but I know there were various times that they would

have a consultation with some members of the committee that was not a regular called meeting and I would not expect any minutes of that, but we did have so many meetings and the number of minutes on that book is so small that it looked to me that it is not all of them. I am not prepared to say that those are not all. Not
734 that there were any formal meeting held of which minutes were not made beyond the statement which I have already made. If you recall there were a great many meetings at which Mr. McKay was not present. I kept the notes of them and sent them to him. I do not charge that he did not write up the minutes, understand but just as I say, there seems to be so few minutes for the meetings. It is true that in addition to the regular minutes kept by the committee of the formal meetings of the committee, that Mr. Anderson and myself were very frequently called on informally for various services that would not have been recorded as formal actions of the committee. All minutes of the formal meetings were supposed to have beeen kept. In regard to the committee never originating anything, I don't think that I am mistaken in saying that they never did. I do not recall but one meeting that was held other than at the request of the American National Bank, and that was the first meeting held in Mr. Anderson's office, I think. Regarding the committee itself fixing its own time of meetings, and deciding at first to hold regular weekly meetings, and afterwards to hold meetings twice a week, I do not recall any meeting held on our own initiative, except the first one. My recollection is that at the very first meeting we mapped out a certain line of procedure and after that we were advised that the American National Bank had created a similar committee to meet with us, and we had a meeting and Mr. Hillyer was made chairman

of the joint committee, and they met whenever Mr. Hillyer called them together. At the meeting of August the 12th, it is true that Mr. Benton moved that the chairman request financial statement from the Mallary Mills Supply, Mallary Brothers and Company, Mallary & Taylor Iron Works, Mallary Machinery Company, Taylor Boiler Works, and also from F. L. Mallary, W. H. Roper, C. F. Smith and the business of J. H. Virgin, but this is the first meeting that I have reference to. I have already said that that was originated by the
735 American National Bank. I recall the meeting at which my committee was present and at which there was a representative of the Central Trust Company present, and the special committee of the directors of the Commercial National Bank were present, which was held at the Commercial National Bank, and at which I was chairman and stated the object of the meeting which was the consideration of the claim by the Central Trust Company to the ownership of $50,000 of bonds of the Beechwood Farms and $50,000 bonds of the Security Investment Company, and which was held to work in connection with the American National Bank to carry out the agreement worked out by them. We acted along with the American Bank officials; it was not our plan exactly. The same is true of the Directors meeting of the Commercial National Bank when we passed a similar resolution as to the same transaction; it was necessary that they meet and ratify the same. I think I handled that for the American National Bank. If the minutes say that our committee also held a meeting on September 30, 1914, at which there were only present the members of my own committee and at which Mr. Lewis requested or offered a motion to the effect that the chairman be requested to call on the proper officers for a statement and list of stockholders

and bondholders of the Eagle River Mining Company, it must be so. I do not recall the various matters at that meeting or that on Mr. Lewis' motion the chairman was requested to ask the American National Bank for a statement of expense to date in connection with the liquidation of the Commercial National's affairs, but will say positively that we did practically nothing at that meeting unless it was requested by the American National Bank. As I stated before I recall only one meeting on our own initiative, and that statement I stand by, I don't there would be another minute of a meeting called except at the request of the American National Bank. To the best of my recollection
736 I do not recall the American National Bank requesting us to hold the meeting of September 30th, right after the stockholders meeting. I do not deny any minutes. I am stating my recollection of that, and from the time of our appointment, we acted entirely at the request of the American National Bank, and if the minutes show that we met at any other time than at the call of the American National Bank, it is true. In regard to me saying that I considered that I was serving the American National Bank when I was acting as committee, I will say that I answered it fuller, in fact this is what I said, I was serving the American National Bank and at the same time serving the interests of the stockholders as to any overplus, and since hearing the various testimony it seems to me as though a resolution was passed creating them liquidating agent. I will not deny that, but all I know when the trade was made after that I never bothered with an examination of the matters, the verbiage of the various resolutions presented. I voted for it all and if it shows that we passed such resolutions, that is true. I will not say that I mean to put in this record that I as chair-

man of the finance committee of the Commercial National Bank and as chairman of the liquidating committee of the Commercial National Bank, as a member all the way through of the board of directors of the Commercial National Bank, voted twice for a resolution putting that bank into voluntary liquidation, and electing the American National as liquidating agent and did not know what I was doing, for I don't think that is a fair way of putting it, for that is not what I said, for I said I did not examine myself the particular verbiage of a resolution and I stand by it. I would have voted for any reasonable resolution to take over the Commercial National Bank; and besides that, these matters
737 were left with reputable counsel of the bank, and I assumed that they were all right; and I am perfectly willing for it to go into record that way Since it had come out here, I know these resolutions contained a resolution that the American National Bank was to act as the liquidating agent of the Commercial, and as liquidating agent it was the duty of the American National Bank to preserve these assets. I don't think that there was anything improper in the American National Bank's having one of its officers and its counsel meet with our committee and assist in deterining the policy, as to these particular matters. There was nothing improper in the American National—the liquidating agent in taking these things and helping in the collection of these notes. In serving the American National Bank I was serving the liquidating agent. I was serving the American National in whatever capacity it was. In regard to the American National Bank paying me for my services, after I brought suit against the Commercial National for those services, my recollection is that suit was filed against the American National Bank and the Commercial National Bank, a

joint suit I think and a separate suit against the American. It is not a fact that the American National Bank had also brought suit against me on various notes which I had originally owed to the Commercial National and which the American National Bank had taken over and that the payment for my services which I referred to was in the matter of a compromise, for if the American National Bank had paid me their suit never would have been necessary. It is true that the American National Bank sued me on these notes, when they paid me the settlement of the entire matter came about, it was not a compromise settlement. I got all I asked for and they got all they sued for. They credited me on this claim with that amount,
738 the amount I agreed to accept. It is not a compromise as far as any indebtedness I owed, and I don't think the American looked on it that way. I don't know whether the amount paid me was charged up to the Commercial National Bank or not. I receipted the American National Bank for it though. I don't think the American National Bank would regard the thing as a compromise of my indebtedness at all, for outside my own worth they had collateral sufficient to pay my indebtedness a hundred cents on the dollar. The entire litigation was settled. It resulted in a compromise of these various suits, that was the way the payment was made. The American National Bank did not render to my committee any statements as to how the liquidation was progressing. I was not furnished periodically with the audits that were made of the Commercial National Bank. You produced to me an audit for the stockholders in my handwriting made a few days after August the 1st, 1914, which showed the standing of the assets at the time the American took them over and I want to further state that the book

was borrowed from me within two or three months after it was issued and I had not seen it since until the other day. All along in that audit in which every single item was listed there are all the entries of payments of every item. I never did ask for any statement. The American National Bank never did deny any information that I asked of them. The only thing that I think that the American National Bank was keeping from me was I recall that in the contract it provided that periodical statements, I think quarterly were to be rendered to the directors of the bank, and also to the Comptroller; and I know that several times some members of my committee mentioned the fact that they had never seen those statements, only to that extent, I did speak about an offer of seventy-five thousand dollars for the Commercial Bank Building. As to whether I treated that offer seriously, will say that my recollection is that Mr. Cobb made that statement to the directors. I asked by whom, and I am not certain whether he
739 stated, it may have been that he did. I think I afterwards learned that it was the Security Investment Company, one of Mr. Parker's companies and the consensus of opinion was against accepting it. The offer for the sale of that building for seventy-five thousand dollars was made at the meeting in good faith, but I do not know that it was made for the purpose of increasing the price of the building in the assets of the Commercial, but I think it probable that at that time they did increase the value of the building, but I would not say that the increase was on the strength of the offer. The increase in the value of the building came about the time of the offer, but I am not sure. My recollection is that I did not know who made the offer for a few days, but I afterwards learned it was the Security Investment Company. I was anxious to know

who it was though, for it was a high offer. There was never a time that I would have given that much money for the building. As far as the market value—that is only what the building would have sold for—I never heard of anyone else that would have given that much for it. It is true that we exhausted every possible effort to get a sale of that building, and listed it with nearly every real estate agent in town. I don't know that we ever received any bona fide offer for it. I have an indistinct recollection that Mr. Slappey stated that he would give around thirty or thirtyfive thousand dollars for it, so far as I know that was the only nibble I had. Then the building was put up and offered at public outcry under the direction of our committee, as I testified the other day. I do not recall whether there was an offer there or not, but it was withdrawn. It was after all these efforts were exhausted that the sale to the American National Bank was made, and I have no hesitancy in saying that I think forty thousand dollars was the value of the building at that time. I do not recall attending the directors' meeting at which the resolution for the sale of the building was
740 passed. It may have been that I was there though. I make that statement because in all these matters I gave preference to them over any other matters and I don't think I missed any meeting. I do not recall seeing a letter from Mr. Taylor to Mr. Mallary in regard to the sale of the building, asking him to take the matter up with the board of directors. At the time Mr. Taylor was suggesting the closing out of the building transaction, taking that over from the Commercial National, there was a great deal of discussion as to what valuation the American National would put on a lot of remaining items, but we never did reach any agreement about that. I could not state

positively, prior to that time wherever an offer was made for any assets for less than full value, that was always submitted to my committee. I do know that it was submitted to my committee in many instances. I do not know that the American National Bank always put the face value including interest up to the time of the actual taking over of every asset of the Commercial which it took over, I assume that they did it, for I have not any reason for thinking otherwise. I don't know whether the assets continued on the books of the Commercial National Bank and were treated as Commercial National Bank assets, I assume they remained on the Commercial National's books though, I assume that to be absolutely true, and I assume whenever the American National took one of them over it was marked up on the Commercial's books. I know nothing about the writing off of any considerable assets at any time, until I heard Mr. Anderson's testimony. I am quite sure that there is no record of any such meeting in the minutes. I have glanced through the minutes
741 of the stockholders and directors' meetings as recorded in the books there, but I would not say that I have read them, I recognize that book you have as the minute book of the Commercial National Bank. I have just glanced through them, looked through looking for the minutes of the sale of the building; I did not examine them other than to see if that was in there. I do not recall the resolution in regard to the sale of the building, I am not prepared to say whether is correct or not.

Re-Direct Examination.

By Mr. Hall:

It is true in regard to my claim for services rendered to the American National Bank, I brought suit against

the Commercial National Bank and the American, and a suit against the American only, and these suits were settled in the transaction. The suit had not been filed against me at all, I think my suit was settled first. In the settlement I got credit on my notes as I claimed, I believed the suit was filed against me afterwards. There was never any suit against me at all, I was served with a notice of the suit. I did get one of the notices of the stockholders' meeting. I saw the advertisement of the two banks in the newspapers. I think I received a copy of Mr. Scott's letter such as has been put in the evidence. I considered it our duty to advise and consult under the primary arrangement between the two banks by which the American took the Commercial over. The stockholders were called on to meet and pass on the consolidation of the two banks, the merger or consolidation, as I recall the notice, and it mentions liquidation as an incidental feature. I don't know whether or not, about the time this offer of seventy-five thousand dollars was submitted a statement of the rentals that were collected month by month, showed an eight per cent earning on a value of seventy-five thousand dollars, there was any detailed statement as to the rental beyond this fact, but I do know that Mr.

742 Cobb made a statement that the income from the building was paying the bank, including reasonable rental for the bank's quarters—that it was paying a reasonable per cent on seventy-five thousand dollars; somewhere around six or seven per cent. The real estate market was very much depressed in 1914, 1915 and 1916 in Macon. There was nothing to show that the meeting of the stockholders of September 30th, 1914, was held on the initiative of the stockholders of the Commercial National Bank, or at the request of the American National Bank, on the contrary since reading

a part of it, I know the meeting was held in pursuance of trades which we had under consideration then, at the request of the American National Bank. This very matter is one of them in which we were acting for them. I don't think that I incorrect in saying that the only meeting that we held was the meeting for the organization, the first meeting. The worth of any particular notes could not be reached any other way for the accounting with the shareholders of the Commercial National Bank, except by its payment, or by an agreement, so far as any writing off was concerned, by the officers of the American National Bank in conjunction with the committee of stockholders. The value of any assets or of any given note, could not be determined in any other way except by payment or by an agreed scale as to its value of writing it off, if there was an obligation to administer the assets of the Commercial National Bank and pay over any surplus to the shareholders of the Commercial National Bank. In no other way one of these notes have been taken out of the Administration of the affairs of the Commercial if the agreement was for the sale of the assets of the Commercial to the American National, with the obligation to pay over any surplus to the shareholders of assets over liabilities. My recollection was that Mr. Hillyer borrowed this audit book from me. I mean Mr. L. P. Hillyer. I did not make those entries of payment in there, so far as I know no member of our Company made them. When I replied that I knew one or two men that had grown more prosperous in 1918
743 and 1919, than they were in 1915 and 1916, I referred to one or two men, instances in which claims were compromised, and in which they were since in good shape.

Re-Cross Examination.

By Mr. Park:

I do not remember any definite date that I became satisfied that the Commercial National's assets would not pay the American's advances. I regarded that the Commercial National Bank had a good deal of what I called slow paper, that realizing on it was largely problematical. Then saving a part of the assets from losses was dependent upon whether some money was put up; for instance as an illustration, I recall the Haley papers —you probably will recall, I took the position, and am still of the opinion that if sufficient money had been put up to pay off the first mortgage on certain properties the Commercial sold we received mortgages, that this could have been worked out without a loss, such instances as that; as I said, it was problematical, and there was no particular date, I could not state positively, that within six months from August the 1st, 1914, I know there would be no surplus for the stockholders, I hoped for it, but I knew there would be a big loss. In that period Jelks had gone into bankruptcy; I don't know whether Mr. Parker had gone into bankruptcy within six months or not, about that time anyhow, and all those were big items. Several other large items had been ascertained definitely to be losses up to that time, we knew the three lines of credit were big losses. For quite a while I will state there was an optimistic view held as to Mr. Parker, and I think probably the American itself shared that view. When it became known as to the extent of the Jelks and Parker losses, we knew that dissipated the surplus and part of the capital. I will not say that those took the entire surplus and capital then. I do not recall any other losses at that time. I said three times I don't know whether the Mallary

losses were within six months or not, but I think they were within twelve. Virgin, with a line around twelve or fifteen thousand dollars, as near as I can recall, had gone into bankruptcy within a year. I con-
744 tinued to serve on the liquidating committee right along, just as I had been doing before, after I knew that in all reasonable probability there would be no surplus for the stockholders, but I don't know for how long I served on it. I served on it as to one matter even after the Citizens & Southern took over the American National; I don't know the date but I served as to one matter after that, not as recent as the Fall of 1918, but probably in 1917.

W. T. ANDERSON, recalled, testified:

Direct Examination.

By Mr. Hall:

Our committee was not made acquainted definitely with the progress of the liquidation or administration of the assets of the Commercial National Bank and a statement of the income and out go of that administration, for we did not see any statement. There was not any time I could say with certainty that the assets of the Commercial National Bank, the remaining assets at any given time could produce. In regard to the nature of the assets which consisted of the ownership of the Eagle River Stocks and bonds, whether they were problematic or not, that Mr. Taylor told me, in an incidental way, that he had called upon Mr. Mallary for a statement of Eagle River business in hopes that some assets could be found there, but that matter never came before the stockholders' committee, that I have any re-

collection of. It was an instance of the problematic nature of the assets of the Commercial National Bank. My attendance upon the meetings and in connection with the affairs of the Commercial National Bank was upon the invitation of Mr. Hillyer. Mr. L. P. Hillyer, chairman of the joint committee, as has been established here, representing the American National Bank, he was vice president of the organization and lived in Macon. I did have an idea that I was rendering services to the American National Bank, and I thought under the circumstances that it was the American National Bank that I was serving. The president made a statement to me in reference to compensating me for that service. Mr. R. J. Taylor was president. He stated that the American National Bank was liable for my reasonable compensation.

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Cross Examination.

By Mr. Park:

The American National Bank never did at any time decline to furnish me or my committee with any information which I requested of them. I was never denied access to any of the books or records or statements of the Commercial National Bank. There were groups of different lists of assets presented to our committee by the liquidating agent for our handling. I do not recall any collected list or any general lists of assets, but those that were handled were presented in groups, single or otherwise. I do not recall as to indorsements on the audits furnished at these meetings, but the audits made by Alonzo Richardson Co. were available. The American National Bank never prevented me at any time from knowing the conditions, the American Nation-

al Bank did not furnish any regular statements to my committee. Referring to my testimony the other day to a considerable lots of items amounting to some hundred and forty or hundred and fifty thousand dollars, which I say were charged off, that might have been, that those items were submitted to our Committee to determine whether any further step should be taken toward collecting those items, but to arrive at that definitely would have been an inference; to make a statement of that kind would be inferential. I was called at a meeting to see what—I considered,—you, Mr. Park, and Mr. Hillyer, had decided about the assets. I am not sufficiently familiar with the books of the bank to be able to point out any place where any such items were charged off. I have seen this statement book often, but I don't anything about the items on there, there may be some that I recognize.

746 In regard to the book being kept up regularly up to September 30th, 1915, the one that came down from the Commercial National Bank, I never saw it except at the Commercial National, I was never given the privilege of inspecting it after it left the Commercial, although I never asked the priilege of seeing it. It seems to be true from the record there that the only losses charged up to that time are $17,304.26, that is up to September 30th, 1915, however, that is the first time that I have ever seen that item or that book, I don't know anything about it up to that date. I could not tell you whether or not it was before or after a report of liquidation of the Commercial National Bank for the quarter ending March 31st, 1917, and the list of bad notes are $89,699.32, that a hundred and fifty thousand dollars I say was charged off in a lump, as I have no recollection of that date. We held a meeting in your (Mr. Park) office on a matter con-

nected with the above case, the Haley matter with Mr. Joel Hurt after that, after the American was sold to the Citizens & Southern Bank, but I can't say the exact date for I can't keep the incident in my mind, but that particular meeting was about the Haley matter. The above meeting was the only meeting that we had after that time that the Citizens & Southern bought the American, but I can't know what date, but I think it was prior to the suit. It is probable that the list of accounts shown to me to get the opinion of my committee as to whether or not it was worth while to pursue the collection of these accounts further, but I do not recall the statement made when I came there in the capacity of a committeeman. The statement that they were charged to profit and loss is not correct, I don't know what disposition was made of them. I don't think I could give you the name of a single debtor's note that was considered worthless then. I think some of the list of notes that were regarded as worthless represented claims as to parties who had gone into bankruptcy. I think the list that was shown me altogether was probably the large cl... ...inst Mr Jelks, but I do not know though, it would be surmise. Regarding this list being presented to my committee for the
747 purpose of considering whether or not anything could be done with these claims, not that they were actually marked out of these assets of the Commercial Bank, I could only tell you what the situation was from my own view point, I do not recall what your purpose was in submitting them to me, as it was not stated to me as I remember. I do not know that they were ever marked out of the assets of the Commercial Bank, I never saw the final disposition of it. Mr. Taylor recognized the liability of the American National Bank for my compensation. I do not know

whether he regarded my compensation as a part of the expense of liquidation or not. When I said that the American National Bank recognized its liability, I don't know whether he was talking about his liability as liquidating agent or not, for I don't know what he had in his mind. The American National Bank had taken over the Commercial National Bank in some capacity, but whether they were liquidating agent, that remains to be proven. At the meeting at which I presided, whatever was the language of the resolutions passed, the resolution or the contract will have to be resorted to. I do not recall some of the details of the transactions at the directors' meeting of the Commercial National Bank, which I attended, requiring the American National Bank to give bond and requiring Mr. Lane to see that the proper bond for liquidating agent was prepared in the sum of $25,000.00. I recall the meeting of directors of November the 10th, that Mr. A. W. Lane was attorney for the Commercial National Bank. I do not recall that he called attention to the fact that the American National Bank had not executed the bond as liquidating agent, as the resolution submitted by the department appeared to require to be given, or the resolution being offered fixing the bond at $25,000.00 and after some discussion of the resolution that the matter was referred to Mr. Lane, with instructions to fix the bond and look into the matter, and in which meeting I was recorded as present. The amount that might be realized out of the obligations secured
748 by the bonds of the Eagle River Mining Company was regarded as problematical. I do not recall the committee having anything to do with the investigation of the Eagle River Mining Company. The only recollection that I have is that Mr. Taylor told me that the Eagle River proposition looked like it

might contain some assets or be of some worth and that he had called upon them, some official, probably Mr. Mallary, the president, to furnish the bank with a statement of Eagle River. After reading the minutes I do not recall the stockholders' committee meeting held September 30th, 1914 at 3:30 p. m. at which there appeared to have been present Messrs. Dure, Anderson, Lewis and McKay, and at which there appeared to be no one representing the American National Bank at all, and at which there appeared to be a motion made by Mr. Lewis requesting the chairman to call on the proper officers for a statement and list of stockholders and bondholders of the Eagle River Mining Company, but I have no doubt that it is correct. I would not question it for a moment, although it is not clear to me. I noticed the indorsement approved on the minutes as 12/2/14 in Mr. John J. McKay's writing, but I did not hear Mr. McKay testify. Regarding the American National Bank agreeing to make his contract with the Commercial National Bank, that Mr. Taylor had a meeting of the Clearing House, in which he asked that the other national banks agree to join the American National in protecting it against any loss in the event the assets of the Commercial did not pan out sufficiently, will say that I haven't any knowledge of what transpired at the meeting of the Clearing House. I will state that I came into the American National Bank directors' office when only Mr. Taylor and Mr. C. B. Lewis of the Fourth National were present. That was after the Clearing House meeting had been held, that is my inference anyhow; and Mr. Taylor said to Mr. Lewis in my presence, "Now, if there is any loss or any trouble with this affair, you fellows have got to stick to me," and Mr. Lewis said he was willing to do his part—I

would like to say, in extension to that, that
749 they then entered into some discussion about the possibility of the American National needing money with which to meet any demands of depositors—it is not exactly definite in my mind, but the best of my recollection is that they then engaged in some further talk about details which I did not think was any of my business and I rather withdrew and stood aside. I understood at that conference, that Mr. Taylor meant as 'you fellows' the other banks in Macon should share the loss with him if there was any. I understood that after that promise of Mr. Lewis, that Mr. Taylor had been left in the lurch, but I did not know the process by which it was accomplished. I remember the meeting at which the assets of the Commercial were gone over on Friday night, and you and I went home after working all night, but I could not say whether it was Saturday or Monday that the conversation between Mr. Lewis and Mr. Taylor took place. My inference would be, from the general recollection of events, that it was probably Saturday morning; it would have been most natural to have had the conversation that morning. I do not recall being at the Central Trust Company Saturday night. I came upon the the scene with the Continental Trust and the Commercial Savings Bank on Sunday morning. I do not recall being down at the American National Bank on Saturday night. I was not interested in that at all except as a citizen of Macon, desiring to see any embarrassment to another bank avoided, the first time I remember coming into that was Sunday morning. I do not recall being down at the Commercial National Bank on Saturday night. I do not remember the Saturday night or Sunday morning that Mr. Lewis came to Mr. Taylor and told him that his board of directors

would not authorize him to make the guarantee, I am sure that I know nothing of that personally, I can tell you that I am not versed on what is admissable in Court, but Mr. Stetson was in that same agreement and he told me about Lewis having refused. I do not know whether the guarantee was dependent on all the banks entering into it and when Mr. Lewis fell down and the whole thing fell through, or not, as I don't know
750 what the trade was between the banks. Regarding me speaking of the committee meeting when Mr. Hillyer called it together, the committee did have regular times to meet at first, and fixed by its own action. Mr. Hillyer was by appropriate action of the joint committee elected chairman of the joint committee, and he was also the vice president of the liquidating agent or of the American National Bank. As liquidating agent, there was nothing improper for him to take charge of the assets belonging to the bank which was being liquidated by the liquidating agent, or to give directions about the handling of these matters.

Re-Direct Examination.

By Mr. Hall:

It would have been proper, as purchaser for him to take charge of them. The letter you exhibited to me is dated September the 16th, 1914.

E. Y. MALLARY, recalled, testifies:

Direct Examination.

By Mr. Hall:

I have heard the evidence, the reference as to the valuation that had been put upon the bank building previous to this transaction with the American National Bank. I did have some data compiled with which to indicate the value of that building, when the question of entertaining an offer of sixty-five thousand dollars for the building was before the board of directors of the Commercial National Bank, and when I heard that Mr. Parker had made an offer for the building I went to see Mr. Parker because I did not want to be credulous. I asked him how he was going to pay for it and he said "that is all right, I have got friends to arrange the payment; all you have got to do is to get the directors to approve it," then I went to Mr. Souder, who kept all the accounts as to the costs in handling the building, and got him to make me a memorandum of all these costs, and rentals so I could submit that to the directors at the same time, meaning all this information. He gave me this information and I put
751 it down on a memorandum, and when the matter was brought before the stockholders I told them "Here is the status of your building, here is what it costs to run it, here is the rents, here is the net earnings", and it was that that they declined it, and fixed the value of the building. This is the exact memorandum that I made from this information. In this memorandum the list of costs is itemized and the total rents put down—the total amount put down for operating the building $2,024.50, that from $7,920.00 leaves the net amount of $5,895.50 which would an

earning of about eight per cent or a little more on the sixty-five thousand dollar offer. I would like to say this also, there is listed down as seventy-five thousand dollars—the ten thousand dollars had already been carried on the vault, the steel vault with its deposit boxes which on that ten thousand dollars more than paid good interest. The safety boxes were not included in that statement, they were outside. Expenses include all of the expenses on that building. There were no taxes on the building, except the taxes paid generally on the building. Is included in it rental, such as is considered fair for the banking house by the Commercial National Bank. $250.00 per month, as far as my recollection is, is the price that the banking building was put at, we tried to buy the building next to us, was the bank floor, the banking floor, then the tile basement, that was at one time rented and used for a large barber shop, it then had two rooms on the second floor, used one as a directors' room and the vault; and a large part of the vault there that they used for the other purposes, all that was included in the $250.00 a month rental.

Cross Examination.

By Mr. Park:

That offer was made by Mr. T. C. Parker, as he told me for some friends of his, but he did not mention their names, I asked him distinctly the question of how he was going to pay for it, and he stated what I
752 said before in my previous statement. He was director of the Commercial National Bank, but I don't know about Mr. Parker's companies, as he had so many, but I don't know the number. I don't remember the exact amount being $174,000.00, that his various companies owed the Commercial National Bank,

but it was a pretty good amount, it was more than a hundred thousand, but I don't think it was quite as much as you stated. I don't recall how much the building had been carried at before this offer, the building was increased not on the basis of the offer, but on the basis of its rental value, I remember stating at the time it was under consideration that there was no building in the City of Macon that earned anything like approximating the net amount that this bank earned on its building in comparison to what the other banks earned on their building. The offer and the raising of the value came at the same time. On the statement that I made, of its net earnings they declined the offer and increased the value of the building. I have seen in the minutes where this offer was submitted to the directors, it was $65,000.00, but I know it was declined, but I don't know the dates. I brought the matter up before the directors that they declined it, but it never came before the stockholders in any way. I would not swear to it, but I think we could have gotten the same amount from another party, tenative you might say it was another offer, for I understood it that way. I don't remember what the building cost the bank. We never made any effort to dispose of it after the trade with the American.

753 MALCOLM D. JONES testified:

Direct Examination.

I have had complete charge of Mr. Haley's estate since Mr. Haley's death. He died the 22nd of January, 1918. I immediately took charge of his estate, his assets, at the request of his widow and executor of his well. The only assets that came into the hands of the executor are $19,907.29, insurance, and $22,16 in cash and some accounts, except the Mexican and Orient Railroad Company Bonds, five in number—a thousand dollars apiece—and a watch and ....., and a tie clasp and two rings. There are judgments against the estate already of about one hundred thousand dollars. A bill to marshall assets and for direction was filed in Bibb Superior Court, and the whole case referred to an auditor. The auditor found certain judgments and taxes to have priority on the assets of the estate and all of the assets of the estate will be consumed in paying the taxes and about three of those judgments and the expenses of administration. In fact, the assets have already been consumed, and already paid out, with the exception of certain funds held up to await a dispute between some early judgments. After the payment of those three judgments there will be left somewhere between seventy-five and a hundred thousand dollars worth of judgments that won't get anything—more than fifty thousand dollars worth; so that, there are absolutely now no assets in the hands of Mrs. Haley belonging to the estate of Herbert F. Haley.

Cross Examination.

By Mr. Park:

I haven't the auditor's report, it is not in the record, as a matter of record, I have it entered in the
754 files in the clerk's office. I do not think it is very voluminous document, and if that is agreeable all around I will get a copy from the clerk and file it as a part of my testimony in this case. There are no other assets that are likely to come into the hands of the administrator. I do not know of any other asset, and I am satisfied that there are no other assets. The Mexican and Orient Railroad bonds were sold and five thousand dollars realized. After conference with the Court—and with the auditor and Mr. W. M. Davis, the bond broker. They are the judgments against Herbert F. Haley, individually. There are some judgments against him incorporated—the auditor found the corporation to be no part of Mr. Haley's estate; and his estate was not bound by these judgments against the corporation. He did not own stock of Herbert F. Haley, incorporated, although he was nominally at the head of it, he was broke. He was connected with the ..... ..... Investment Company; but he did not own a single share of stock in either one of them, although he was acting as president. Nobody knew anything about it during his life time. After his death they found out that he had had no real interest in either one of the corporations for several years. The stock all showed it was transferred and sold years before his death; I would not undertake to say how many, but a great many before his death. The question of ownership of all those corporations, have all been settled in the bill to marshall assets. The auditor found that there was no connection whatever between the corporation and Herbert

F. Haley, individually, and that he had no interest in these corporations. That has not been more the decree of the Superior Court, as there are some exceptions to the auditor's report—not on these matters however, but as to the priority of certain judgments. These are the only questions left about which there is any contest pending, the exceptions to the auditor's report—whether Mrs. Haley's judgment—a judgment she paid off and had transferred, has priority over a judgment of the Atlantic National Fire Insurance Company. These judg-
755 ments date back to 1915, and there are judgments in 1916 and 1917—they total $97,419.08; and when Mr. Haley died he owed about ten thousand dollars taxes on all of these properties. A good deal of that was not against him individually, but against the corporation.

MRS. JULIA C. TINDALL testified:

By Mr. Akerman:

My name is Mrs. Julia C. Tindall. I am being sued as guardian for Bessie Tindall, alleged to have one share of stock in the Commercial National Bank, and F. C. Tindall, who is alleged to have had one share of this stock, and J. C. Tindall, alleged to have had two shares, and this stock was paid for by some money that came to them through the death of their half brother, James Tindall. I never did have any money in my hands, as guardian for these children, except that what went into the stock. Mr. J. C. Tindall has been dead for four years. It has been almost ten years since they got the money from their half brother who died. I have not had any money at all, as guardian for them, since that time. I have not, as guardian for the children, any

property of theirs in my hands, and never have had any except this stock. I have the stock certificates in the bank, and all the papers in the bank.

Cross Examination.

By Mr. Park:

I was regularly appointed guardian for these minors, by the ordinary of this county, and I have the papers. All the property that came into my hands from this half brother, I was invested in shares of bank stock. I invested all the funds I had in this bank stock with the exception of that I spent on my boy, who was attending Barnesville school. There was an order authorizing me as guardian, to make this investment, but I don't know whether it was an order of the Superior Court or not, as I can't tell you exactly about
756 the papers. It was all done there—Mr. C. F. Murrow, Mr. Tindall's son, was a lawyer and he advised me about everything. I have those papers. I think there was an order from the ordinary authorizing me to make this investment in bank stock, one share for each of the four children. In regards to one of them having two shares, each one of them had one share; but this second son was off at school, and the older brother had saved up some money and he bought the second brother's share from him, so it would help pay his expenses at school, that was how it was changed. The original investment was one share each for Bessie K., F. C. and J. C. and Julian W., and afterwards J. C. bought Julian W.'s, he was not of age at the time of the purchase, but I made the purchase for him. I am sure the purchase was authorized by an order of Court. The other children are still in life. The oldest boy is 22. Julian, Julian does not appear as a stockholder. Bessie

is older than Frank, she is 21, and Frank is 18 and not of age, although he seems to be, because he has always had so much responsibility, but he is still a minor. Miss Bessie has been of age since April of this year, and J. C. died, it will be four years ago this fall.

R. C. SOUDER testified:

Direct Examination.

By Mr. Dodson:

I was assistant cashier with the Commercial National Bank. I knew Mr. E. N. Lewis quite well. He was cashier at the Commercial National Bank at the time. I am acquainted with his signature and would know it if I see it. Those three papers that you have shown me are signed by him, as that is his signature.

Cross Examination.

By Mr. Park:

The book that you have there is the stock ledger of the Commercial National Bank, the one that was in use at the time of the contract between the Commercial National Bank and the American National, the
757 only one we ever had. It shows all of the transactions from the opening of the Commercial Bank until its voluntary liquidation.

JOHN F. LEWIS testified:

Direct Examination.

By Mr. Dodson:

I am J. F. Lewis, and was stockholder of the Commercial National Bank. I had fifty shares, and owned them for quite a number of years. I did not own 150 shares in addition to the 50 I owned in my own right and title. That certificate of stock was turned over to me by Mr. E. N. Lewis, who held the position of cashier in the Commercial National Bank. The reason that I have the 150 shares of stock, is that I was simply backing up Nat; he asked me to let him subscribe for that amount and asked me to finance it for him, this was new stock that was issued by the Commercial National Bank. The Commercial was originally a State bank, originally the Commercial Savings, when the new stock was issued. They increased the capital stock of the bank, and Nat wanted to participate in this increase, and did not have the money, and I let him have it for the purpose of taking this stock for himself. That draft is for $18,000.00—what he paid for the stock; he drew on me for it, with this stock attached—drew the draft on me with stock attached, and that is the amount I loaned him. I furnished it to E. N. Lewis, the draft is signed E. N. Lewis. He left the stock with me as collateral to the loan, and the note was given for the renewal of that, original draft that I loaned him the money on. There is where I credited the draft with three dividends. It was sent to me by Nat, meaning E. N. Lewis. He forwarded it to me individually. That note was given for the renewal of the draft in this transaction on January 1st, 1917. I presented the stock to Mr. E. N. Lewis

to have the stock issued to him instead of me, but I do not recall the date, but he did not succeed in transferring it. He stated that every officer in the bank knew it was his stock, that is every officer in the
758 Commercial National Bank; that they all knew that that was his stock; and that he was borrowing the money from me; that every officer in the Commercial National Bank knew it as well as he did. Mr. E. N. Lewis was cashier of the Commercial National Bank, and he stated to me that all of the officers in the above bank knew the stock was his and not mine from the time it was purchased.

Cross Examination.

By Mr. Park:

Mr. E. N. Lewis was my nephew, and it was a personal accommodation from me to him. The stock is in the same form that it was originally sent to me in, in other words when the certificate originally came to me at the time of the purchase it was in my name, and it is the only certificate that I ever had. So far as I know the certificate was never in Mr. Nat Lewis' name, and I held the certificate with the draft which I paid and which I have identified, and without any note from Mr. E. N. Lewis until January 1st, 1914. During the period I received three dividends from the Bank which amounted to $450.00 each. They were paid on January 2nd, 1913, July 2nd, 1913, and January 2nd, 1914, and on January 1st, 1914, Mr. E. N. Lewis sent this a note dated January 1st, 1914, which represented the same draft and same transaction, and on July 2nd, 1914, I received another dividend of $450.00, which I credited on the back of the note. From the time the stock was originally issued until the present day, it

has always stood in my name, and I received every dividend that has been declared on the stock from the time it was originally issued until they quit paying dividends, so far as I know, and I think dividends were declared every six months. I have credited on the back of the draft and on the back of the note, dividends for every six months from the date of the stock, what I received. I am positive about that; I am not positive about what dividends were paid, that is all that I know about, and if they declared any more, I don't
759 know it. I held fifty shares of stock that he knew nothing about or had nothing to do with, and received the same amount of dividends at the same time that I did on this stock, I think to the best of my recollection. I wrote that letter. The letter in which I requested Mr. E. N. Lewis personally to have this 150 shares of stock transferred to his name, I think was the first request I ever made to have the stock transferred, and the only request. I don't recall the exact date of the meeting of the stockholders, but if it was on August the 12th, 1914, the letter was written after that meeting of the stockholders, that is the correct date the letter was written, August 18, 1914. I don't remember the date of the stockholders' meeting at all. That is a carbon copy of the letter I received from Mr. E. N. Lewis, and I received that letter.

Re-Direct Examination.

By Mr. Dodson:

That letter has Mr. E. N. Lewis' signature on it. That letter was attached to the letter dated August 19th, the following:

"Mr. J. F. Lewis, Valdosta, Ga.
Dear Sir:

Replying to your valued favor of August 18th., enclosing certificate for hundred and fifty shares of stock of the Commercial National Bank, with request that same be transferred from your name to mine on the books of the bank.

I am advised that this transfer can not be made, as the stock was not presented for transfer until after the bank was placed in voluntary liquidation by the actions of the stockholders. The bank being in liquidation, its officers cannot transact any business for it or in its name except such as is incident to liquidation. I, therefore, return to you the certificate, as you doubtless wish to hold it as collateral to my note which you hold.

Regretting that I cannot comply with your request, I am,

Very truly yours,

E. N. LEWIS, Cashier."

760 R. C. SOUDER testifies:

Cross Examination.

By Mr. Park:

After looking over the stock ledger, will say that the certificate number 382, for 150 shares of stock, represents an original issue of stock, and I made every entry on that page in the ledger. When saying that it represents an original issue, I mean it was issued direct to John F. Lewis, and it was not transferred from a previous stockholder. I do not remember the date that the stock of the Commercial National Bank was increased to three hundred thousand dollars, but

probably it was organized about August somewhere within a year and a half or two years afterwards. I might have said that the bank was started in 1910, but I meant 1908, it was organized in 1908, I will say now that the new increase of stock was issued October the 10th, 1912, at least that is the date the certificate bears.

Re-Direct Examination.

I was with the Commercial National Bank on October 10th, 1912, and was assistant cashier. I knew the names of substantially all the stockholders and I think Mr. John F. Lewis was among them, I don't know how many shares he had, unless I refresh my memory. 'Resolved, that the officers be instructed to allow all stockholders until September 1st, 1912, to purchase their pro rata of the increase of stock, I imagine means, they were going to call on the stockholders and give them the chance to purchase whatever stock they wanted up until September the 1st. If Mr. Lewis owned fifty shares originally of the two hundred thousand dollar capital, he would have the right to purchase his pro rata share of the new issue of a hundred thousand dollars, based on his fifty shares, his proposition in other words of the hundred thousand dollar issue would be the same as it bore to the original two hundred thousand capital if they wanted to hold him down to the original resolution. If Mr.
761 Lewis owned fifty shares of the original capital stock of two hundred thousand dollars when the capital was increased one hundred thousand dollars and each stockholder was entitled to purchase his pro rata part of that new increase of stock, Mr. Lewis'

share would not be 150 shares of the new issue. Mr. E. N. Lewis as a stockholder originally, and owned, at the time of the stock increase, 63 shares, and he did not seem avail himself to the privilege of increasing those in the issue of new stock at the time. Mr. E. N. Lewis did own 65 shares. He had owned more than 65 shares. I do not know that Mr. Lewis put up his stock around with other parties to borrow money, and I was under the impression that there were more than sixty-five shares in his name when it was increased. I can't say how much he did have, but at the close I think he owned 131 shares at the time it went into liquidation, as he was constantly buying stock all the time. There are a great many shares that he sold, but I do not know whether it was sold or whether it was transferred as collateral. The greatest number he ever owned was 367, but I can't tell whether it was transferred as collateral security or sold, if it was cancelled in his name it would have to show in somebody elses'. He did not own 367 shares at the time resolution, so I couldn't say what the pro rata would be, but if he did own it with strings tied to it, the pro rata would be about one-third of it or 178 shares. There shows several places in the record where Mr. Lewis availed himself of the privilege of increasing his stock but not under that resolution. Mr. Lewis did not avail himself of an opportunity, as far as the records show of increasing his stock, the 50 shares, at the time the other stock was issued. I was an officer at that time, and Mr. Lewis had detailed charge of the office, Mr. Cobb and Mr. Mallary, I think, were both active in seeing that the stock was subscribed. I won't swear that Mr. Mallary was so active, I think that Mr. Lewis and Mr. Cobb were more active than the others. I know nothing about the

762 details of it. It never came to my knowledge that Mr. E. N. Lewis had increased his holdings a hundred and fifty shares, and borrowed the money from Mr. John F. Lewis, and I didn't know any thing about it until after the whole thing was over. I knew that there was some trouble between Nat and his uncle Johnnie, but I did not discuss the details, and didn't know anything about it. I made those entries.

Re-Cross Examination.

Mr. John F. Lewis held fifty shares, prior to the issuance of this particular certificate number 382 for 150 shares. He got the fifty shares at different periods, he did not buy it all at the same time, on July 14th, 1908, ten shares, on April 3rd, 1911, ten more shares; and April 3rd, 1911, eighty shares; on October 7, 1911, he transferred eighty shares leaving it down to the original twenty shares; on October 7, 1911, he bought thirty shares more, leaving him fifty shares, on October 10, 1912, 150 shares more were issued him, making him a total of two hundred shares. Mr. E. N. Lewis held sixty-five shares of stock on October the 10th, 1912, and it was subsequently increased from time to time, and on August 1st, 1914, the last entry is June 12, 131 shares, which he still had August 1st one hundred and thirty-one shares at that time. They represented his holdings at the time of the contract with the American National Bank.

Re-Direct Examination.

Mr. E. N. Lewis had one hundred and thirty-one shares at that time, of the contract with the American National Bank.

Main case taken here.

MR. J. F. LEWIS testifies:

Cross Examination.

I attended some meeting right after the contract between the Commercial National Bank and American National Bank was made, but I can't say whether it was the meeting of the stockholders of the Commercial National Bank on August the 12th, 1914, because I can't remember the date, and at that meeting a contract which had been signed by the offi-
763 cers of the Commercial National Bank and the officers of the American National Bank was introduced or offered to the meeting, and read by Mr. A. W. Lane, counsel for the Commercial National Bank, but I don't recall the exact words. I don't remember a discussion at the meeting that regarded the paragraph in the contract, which provided that nothing in the contract or resolution of the directors should be construed as relieving the stockholders of the Commercial National from the liability to respond in the event it became necessary to have recourse on the stockholders of the Commercial, neither do I remember any question being raised at the meeting of the stockholders as to whether or not they were relieved of their liability by this contract and would be held to respond as the affairs were all discussed by the lawyers. There was so much said that I don't recall their statements. I remember Mr. W. T. Anderson making a statement, but I can't recall what it was. Regarding Mr. Anderson making the statement after discussing the classification of the paper of the Commercial National Bank made by the officers of the American National Bank, and Mr. Anderson then making the statement that, according to his recollection, there was

a margin of $443,000.00 of assets over liabilities, and that the American National took over the Commercial with that margin, backed by the additional liability of the stockholders, my recollection is that Mr. Anderson made a statement about the condition of the affairs; that they had assets of something like four hundred thousand dollars over liabilities; but just who it was stated by in the meeting I don't recall, but I know about that of my own knowledge. Regarding me attending the meeting held on September the 30th, 1914, will say that I attended two meetings, but I don't recall the dates of either. At both of these meetings the contract between the American National Bank and the Commercial National Bank was ratified, I think, and the contract was read at both meetings. I do not recall whether
764 or not the minutes of the board of directors, under which the actual transfer of the assets was accomplished, were read at the meeting. I was appointed as a member of the stockholders' committee at the meeting of August 12th, and this appointment was confirmed at the meeting of September the 30th. I attended about one or two meetings to the best of my recollection. I don't remember attending a committee meeting, held on the same day that the stockholders' meeting was held, which was August 12th, 1914, right after the stockholders' meeting adjourned, although I can't recall I probably did though. I do recall at this meeting of making a motion that no salaries be paid the officers of the bank after August the 1st, 1914. I think I do recall making a motion that no expenses in the matter of the liquidation of the bank be incurred without the approval of this committee, and that a copy of this resolution be furnished to respectively the American National Bank and the Commercial Na-

tional Bank. I do not recall offering the resolution "Mr. Lewis moved that the next meeting of this committee be called as soon as the National Bank Examiner prepares his report," but I won't deny it at all, and I remember attending a meeting after the one above but can not remember the date, but recall at that meeting a resolution was offered approving the sale by the liquidating agent of Government bonds held by the bank, I think Mr. Taylor sold the bonds, or reported that he sold them and we approved it. I remember something about bonds, but whether it was authorizing the sale or approving the sale, the best of my recollection that was approving the sale, but I remember about the bonds. I think I do recall, but I am not positive at the meeting that at the first meeting on August 12th, Mr. McKay moved that the $300,000.00 worth of bonds belonging to the Commercial National Bank be sold, and I rather think that I remember that on August 26th it was reported that the bonds had been sold and it was moved to approve the sale. That is my recollection about the bonds—either ordering them sold or approving the sale. Regarding the second meeting at which occurred, on motion of Mr. Anderson, O. A. Park and Malcolm D. Jones were requested to confer about the bonds of the Security Investment Company and the Beechwood Farms and submit to these committees a report outlining their suggestions as to the proper procedure for equitable settlement of the claims
765 made by the Central Trust Company of ownership or control of certain of these bonds as collateral security on an indebtedness to them by T. C. Parker. The voting 'aye' were Dure, Anderson, McKay, Park, Lee, Hillyer, Taylor; voting 'no' J. F. Lewis with the request that the vote be recorded, I think that reso-

lution was to make some compromise and I wanted the amount collected, and I objected to any compromise and wanted to collect it in full, that is to the best of my recollection. I do not remember attending a meeting on September the 30th, just after the meeting of the stockholders at 3:30 in the afternoon, and on my motion Mr. Dure was elected chairman of the meeting and Mr. McKay was elected secretary. I don't recall our committee meeting the same afternoon, and me making a motion "On motion of Mr. Lewis the chairman was requested to call on the proper officers for a statement and list of stockholders and bondholders of the Eagle River Mining Company." Regarding me offering a motion requesting the chairman to ask the American National Bank for a statement of expenses to date in connection with the liquidation of the Commercial National's affairs, I remember that coming up, and someone said that the American National was employing two men on account of the Commercial National. I told them my understanding was that the Commercial National had nothing to do with any expenses; that the American National was to handle this business without any expense to the Commercial whatever. I did object to it, and I wanted to know the expense account that they claimed, but I do not remember attending any other meeting of the stockholders' committee. I do not remember whether it was after I had attended the stockholders' meeting, and after I had been elected and begun to serve as a member of this committee that I requested my nephew, Mr. Nat Lewis, to transfer this 150 shares of stock, but if the letter about the transfer is dated August the 18th, and the date of election on this committee was August the 12th, it must have been afterwards.

766 Cross Examination.

At the stockholders' meting of August the 12th, 1914, I do say that something was said at this meeting, but by whom I can't say, I don't remember whether any one stated that the venture of the American National Bank was backed by the liability of the stockholders of the Commercial National Bank. I offered a resolution in the stockholders' meeting that after August the 1st, 1914, no salaries be paid to the officers of the Commercial because the bank went out of business on August the 1st, 1914, and would not be running any expenses, and the officers had no further duties to perform except those which were described in the contract for effectuating the trade. The above was my reason for making that motion, they were doing nothing to earn a salary, and no officers in the Commercial National Bank had any duties to perform to earn a salary. Mr. Taylor reported to the committee that he had sold these bonds, at the time they approved the price, and I remember approving the sale of the bonds.

JOHN J. McKAY, testifies:

Direct Examination.

I was secretary of the committee that was elected by the stockholders of the Commercial National Bank. The book you have looks like the minutes of the committee, the books marked 'minutes stockholders' committee', has been in the hands of the American National Bank for a long time, and I have never been able to get it back from them, I have tried a great many to get it, they denied having it. I have looked the minutes

over to see whether or not there have been any changes in them. Those papers in here evidently are the minutes of such meetings as they indicate, that is not a complete record of the minutes of that committee. The minutes given in there are correct as far as they go, evidently there are no changes or erasures, because those sheets in there show my notations on them in my own handwriting. I marked on there approved, the meeting of November the 11th approved December 2nd, November the 13th, approved December the 2nd. All these
767 marked approved means that the minutes were read at another meeting of the committee and approved by the committee on the date indicated under my handwriting notation there. The four notations on the bottom are in my own handwriting. I should take the minutes, as far as they appear approved, correct minutes of the meetings of which they purport to be the minutes, but I cannot testify that this is the complete minute book, because it has not been in my hands, as I have not been able to get it. Mr. Hillyer borrowed it, and the American people denied they had it, every time I asked them for it, but I am satisfied that there were other minutes of the committee that are described in here. Sometime the Committee was called to the American every day, and then again at other times, once or twice a week, but it had regular meetings once a week for months and a great many special meetings, call meetings to handle the different matters.

Cross Examination.

The minute book was borrowed by Mr. Hillyer, but I can't tell the date. I had kept it in my desk. He was supposed to have kept a duplicate book in the bank and I was supposed to send him a carbon copy of each

minute for their information down there. He sent to my office and borrowed that book, and I overlooked it until Mr. Dure asked me one day for some information; then I recalled it and I immediately went to the bank to Mr. Hillyer and he disclaimed any knowledge of it. They told me if they had had it, it was lost, and this is the first time I have seen it since. It must have been about a year and half or two years since Mr. Hillyer borrowed it, and as soon as I discovered the absence of the book I tried to get it back, but I don't remember the date, I think it was after Mr. Hillyer left the American National Bank. I suppose I sent him carbon copies of those typewritten sheets.

768 JOHN J. McKAY, testifies:

Direct Examination.

I was Secretary of one of the stockholders' meeting of the Commercial National Bank, but I cannot tell on what date it convened. There is some interlineations there (referring to minute book) that I knew nothing about, "The following resolution for voluntary liquidation, was offered by A. W. Lane" that seemed to have been interlined, and is the only change I have noted, there also seems to be a difference in the color of ink in the words "The following was offered by A. W. Lane", and there is also another difference, these minutes are carbon copies of the orginal writing, whereas this interlineation is the original writing itself. Should I declare these are the minutes, I cannot say that wording is a part of it; I am not willing to do it. That is my signature at the conclusion of the minutes. The other looks like Mr. E. N. Lewis' signature. Regarding the

certificate of Mr. Lewis being a correct report of the vote on the adoption of the resolution at that meeting, as well as a correct copy of the minutes, I have no recollection of the certificate by the cashier as to the correctness of the minutes. According to my recollection I acted as secretary of that meeting. After reading the minutes, I apprehend that they are correct, and I would not have signed them as secretary if I had not thought they were. They are correct as far as they go. There are things that transpired at the meeting that are not recorded in the minutes. The reason I say this is because there were certain things at a previous meeting attempted to be recorded in part or in whole that were not—and remarks that were not officially acted on at that time were not noted by me in the minutes of the meeting though they might have a bearing on the action of the meeting; I just want to make that
769 explanation, because they differ from other minutes in that respect. I do not recall whether the minutes taken by me only show the action of the meeting and not the discussion or not, but the action they did take was based on informal—only the formal action. I do not recall any action the meeting took that was not recorded in the minutes, the action they did take was based on informal statements made at the meeting. The minutes do not purport to show discussion at the meetings, I don't think, properly speaking, the secretary of a meeting ordinarily should record anything except what action was actually taken. That is a correct minute of the meeting, officially acted on. That is my signature on the carbon copy of the affidavit (referring to affidavit inserted in minute book). As I recall the original paper, of which the above is a carbon, was presented to me by an attorney, with the statement that it was simply to correct the clerical error

as to the number of shares voting, it was not properly recorded and it was correcting that error in the addition there, 603 shares should have been 613, the ten shares difference. I don't know whether that was the affidavit prepared to be sent to the Comptroller or not. I recall signing a paper, but I understood it was to correct the clerical error, or the error of the tellers as to the number of shares of stock reported as voting in that meeting. I could not tell if it was not a correct copy of the paper I signed at this late date, but I recognize my signature on the paper. When the paper was brought to me by an attorney to sign, I understood it was the attorney for the American National that brought, and not Mr. A. W. Lane, attorney for the Commercial National Bank, I don't know whether it was by, you, Mr. Jones or Mr. Lane. I cannot remember very well five years back, but if I signed the paper or affidavit, I must have thought it was true from the calculations recited to me by the attorney. The paper here in not sworn to, and that is the only paper presented to me, I don't know whether the original paper was sworn to or not, but if that is the original it was not.

770 Cross Examination.

I do not know who put the papers in that minute book Com. Nat. Bank, in fact I never saw the book and never saw the papers put in it. Regarding the record of the minutes and paper in the form of an affidavit being carbon copies, some of them appear to be originals, I can't say which were; that sheet there (indicating) looks like an original copy, and so does that one, that is undoubtedly a carbon, but if those are carbons I can't say where the originals are. I did not put these papers in the book. They were signed

at different times and with different pens. That is not my usual signature, though it is my signature; that was signed at my desk, with the pen I generally used to sign my name. They are the minutes, but I don't know about the desk, but it was signed with the pen I usually use for my signature, and the other paper was signed with a steel pen.

MR. E. C. SCOTT, testifies:

Direct Examination.

Referring to the stock unsold that was held by the Commercial National Bank, we have now in the assets of the Commercial National Bank thirty-three shares of stock of the Georgia Kaolin Company, which is carried at a valuation of $60.00 per share; it was originally entered on the books at those figures. In addition the Commercial National Bank has forty-five shares of the capital stock of the Pine Tree Paper Company and fifty shares of the Parker Hotel Company stock, of Tampa, Florida, neither of which was listed in the assets of the bank; but both of these certificates were issued and stand in the name of the Commercial National Bank. The Georgia Kaolin Company stock was acquired in a settlement had with some of the Mallarys—some of the Mallary indebtedness after August the 3rd, 1914, but just what notes it was taken in settlement, I cannot state. The stock of the Pine Tree Paper Company, according to my recollection, was acquired through a settlement we had with DeWitt Flercher; I think his indebtedness was cancelled and that this stock was taken in settlement of
771 the debt, I don't remember the date exactly that it was acquired, any further than to say

that it was after August the 1st. I am not as familiar with the Parker Hotel Company stock as I am with the other, but I think it was acquired through T. C. Parker, which was also after August the 1st, 1914. As to an estimate of the value of the different stocks, will say that the Georgia Kaolin Company stock is worth what it is listed at on the books, may be more, it is hard to determine the value of stock of that kind; it depends more than anything else what a person or what the stockholders are willing to take for it, there is not an open market for that stock, it is only a small close corporation, and what you could get for it would depend on who happened to want to buy it. I think it is worth what it is listed at, possibly worth $60.00 a share, which I regard as a fair value. The Pine Tree Paper Company, I have no idea what would be the value of that stock, as it has no market value, so far as I know, and I don't know that I would be willing to buy it at all, or take it in settlement of the debt the bank owes. I am not positive about the Parker Hotel Company stock, but I think there has been an offer of about fifty cents on the dollar made on that stock, and there are fifty shares, something like forty or fifty, but I am not positive. The Commercial National Bank has no other assets besides those already testified about, that I know of. The plan for handling the account between the Commercial National Bank and American National Bank was worked out between Mr. Taylor, Mr. Nat Lewis and myself. Mr. Hillyer was not in town at the time the Commercial National came down to the American National. In the arrangements for the keeping of the accounts between the two banks, there was some discussion as to the giving of notes by the Commercial National Bank to the American National Bank for this indebtedness, as I recall, the discussion was had with

Mr. Taylor and Mr. Lewis, and it was the advice of the banks counsel that notes be taken for the amount due at the close of business each day. It was finally agreed upon just as a matter of convenience, to show the details of the transaction from day to day, that it be carried on the books of the American National Bank as an overdraft against the Commercial National and on that account was entered the debits and credits each
772 day just as it occurred. That was done more as a matter of convenience, and to get a more detailed accounting of each day's transactions than would have appeared had we taken a note, and for the purpose of more accurately arriving at the daily balances at the close of each day's business, that was necessary for the purpose of computing interest on the account and advances, as the banks close their books every day. Under the contract providing for interest, the interest was to be figured on the balance as shown at the close of each days' business. It was usually pretty late in the day and sometimes we run in the night before we could get the balance for the day closed up. The officers of the Commercial would not be available at that time to give notes. Those matters were included in the discussion, as to the difficulty of giving notes, closing up the matter. It was on Monday after the 1st of July, it seems to me that it was either on the 1st or second of August, the books of the Commercial National Bank were brought down to the American National. Only the books containing the active accounts were brought down to the American. The correspondence files, the general papers and all were kept in the vaults at the Commercial National Bank building, the officers of the Commercial National Bank, I presume, had charge of them. I had no custody of them, and did not have the combination of the safe then, but

I have it now. I got the combination some time this year. Whenever I wanted anything out of the Commercial National Bank, before I got the combination, I went to Mr. Karsten for them. Mr. Karsten I remember, assisted in the winding up of the Commercial National Bank very soon after August the 1st, 1914, and I think he was given the combination at that time and kept it until he went out of the service of Mr. Joel Hurt, liquidating agent of the American National, some time last year. He was employed by the liquidating agent of the American National Bank to assist in liquidation. The books and records of the Commercial National were partly under the direction of Mr. Nat Lewis, they were all kept in the vaults of the American National. I mean the ones at the American National.

773 I could not state positively who had charge of the books and papers left at the Commercial building. I turned over to you (Mr. Park, Plaintiff's Attorney) the books and papers and so forth to be used as evidence when you were preparing this case, and that is what was introduced. Most of the books came from the vaults of the American National Bank and some came from the vaults of the Commercial National Bank. The correspondence came from the regular files of the Commercial National. I do not know who filed the correspondence, I didn't have anything to do with it, and I don't know whether any employee of the American National Bank had anything to do with it or not.

Cross Examination.

There are some files of the correspondence that has been put in the evidence of this case, but I just recall those that were introduced when I was present at the

former hearing. I saw them at the time they were introduced, but I did not examine them all in detail. I turned over the files to Mr. Park, but I could not state each specific letter that was in the files. I turned over all the correspondence files that I got out to Mr. Park, and I guess the rest are in the files of the Commercial National Bank. Mr. Karsten never did have anything to do with the Commercial National Bank, as far as I know, only in assisting in winding up the affairs of the Commercial National, of which he took a right lively part, but he never had any connection with the Commercial otherwise. The American National Bank kept a register of collateral pledged to the bank, but none of the assets of the Commercial were ever placed on that register. Regarding me having endeavored to figure how much had been realized on the assets of the Commercial National Bank at a previous meeting, I thought that was given in my testimony when I was on the stand before. The American National Bank suspended business on December the 7th, 1916, and has done no banking business since then, it has been in the process of liquidation. It retained its corporate exist-
774 ence. As cashier, I executed a great many documents for further assurance, quit claims and things of that sort. The European agitation of the early Fall and late Summer of 1914 began to show its effect immediately in this section, on values, and the strengency of money. Actual hostilities began early in August, 1914. We did not feel it so perceptibly in this country by the 12th, 15th and 20th of August or the first of September, not untill the cotton began to come in, cotton begins to move the latter part of August and along the first of September. The contract between the American National Bank and the Citizens & Southern is in writing, but I have never seen it. It is true that

the purchasers of the stock or the controlling stock of the American National Bank and subsequently all the stock was purchased on the basis whereby there was a guarantee of one hundred and fifty dollars a share for the stock to the stockholders and further upon liquidation that the American would pay the stockholders over one hundred and fifty dollars a share that the bank liquidated. I don't know about the contract between the Citizens & Southern Bank and Mr. Hurt relative to purchasing the assets of the American National Bank. At any rate, the trade was made on the judgment of the officers of the bank after valuing the assets with a guarantee of one hundred and fifty dollars per share, and that if the liquidation should develop, more than a hundred and fifty dollars a share, the purchaser was not to receive the benefit of that, but it was to go to the seller of the shares, the shareholders. The conversation with Mr. E. N. Lewis in regard to the keeping of these accounts between the two banks was held on the first morning after the liquidation began; on Monday morning either August the 1st or 2nd, I think.

775 To the best of my recollection Mr. Taylor, Mr. Lewis and myself were the only three people there. Mr. E. Y. Mallary was around the bank. He was president of the Commercial National Bank. I could not say that the matter of giving notes was originated in the office of counsel for the American National Bank at their suggestion, it was their advice. Cannot say that this is the first that I had heard of it. We consulted the counsel on the matter of giving notes, and discussed it with him, Mr. Park, that notes be taken; whether that was his original suggestion or whether it was suggested by someone else I could not say. I got checks from Mr. Lewis every night, for the purpose of accounting and showing how the accounting stood. I

don't know that we could at the close of business each night, it might have been sometimes the next day, but at stated intervals. In some instances he might have been out of town or out of the office and when he came back he would give the check, which kept our accounting straight. A note could have been taken just as easily, but you would not have had an itemized statement after giving the note. The checks were drawn for an amount aggregating the items. A note could have been drawn in the same way, but it would not show in detail each days' transaction; the accounts had to be debited and credited with receipts, but the same thing could have been accomplished with a note as by a check. If Mr. Lewis had been absent, you would have been confronted with this; you would not have put through loans and discounts notes which had not been signed, it would have been a little irregular. We had notes representing loans and discount items but we put this overdraft through. We did have at one time such overdrafts. In some seasons of the year cotton accounts run up to amounts larger than three hundred thousand dollars as overdrafts. We had a regular cotton book where we carried them as loans, they were entered in the book in the shape of overdrafts and they were carried as loans. It was a rather unusual situation as compared with the regular way of doing a banking business. If these accounts had been balanced some night after Mr. Lewis had gone home, he would have been there the next morning, as he never stayed away more than a day or two at a time. I do not remember the exact date of the discussion as to taking the notes. It was on the Monday that the liquidation began, but whether it was the second or the third I do not know, but it was the first Monday. That was when the liquidation began and the account started. It was

776

on Monday that I had this discussion, and Mr. Hillyer was not here then.

L. P. HILLYER testifies:

Direct Examination.

I was vice president of the American National Bank during the year of 1914, and had been for some years. I remained with the bank during the years of 1914, 1915, and the first part of 1916, and remained with it until the majority of the stock was sold which was in 1916. I was familiar with the circumstances that lead up to the contract between the American National Bank and the Commercial National Bank. I had heard some little talk; not to amount to anything, about the Commercial Bank prior to the contract. I know Mr. Brooks of the Georgia National Bank of Athens. He was in my office sometime in July. He talked about the Commercial National Bank and said it was hard for him to get his money out of them; I don't remember his exact words; he created the impression that he was afraid of them. We were invited by the officers of the Commercial National Bank to go over the assets of the bank, either on Thursday or Friday night, I have forgotten which date, before the contract was finally signed. I participated in the examination of the papers of the Commercial National. I can recall some of the men that were present, but not all, there were as far as my recollection goes, Mr. R. J. Taylor, Mr. E. C. Scott, Mr. James J. Cobb, Mr. E. Y. Mallary and Mr. O. A. Park, and there may have been one or two others, and Mr. E. N. Lewis, I think, but I am not positive. I think Mr. W. T. Anderson

777 was there also. After going over the assets of the Commercial National Bank, I thought the condition was pretty bad, and I was not satisfied to make the deal with the bank on the strength of its assets, I stated that to Mr. Taylor, but I did not make the statement to the officers of the Commercial National Bank, as I did not want to hurt their feelings. That was either Thursday or Friday, I cannot recall which. I don't know whether one day intervened or one night before the Saturday I left here. I attended a meeting the representatives of the clearing house bank, the four national banks held shortly before that. I recall the ones who represented the different banks at that meeting, and they were as follows: Mr. E. W. Stetson, Mr. Charles B. Lewis, Mr. R. E. Finley and Mr. R. J. Taylor and myself, there might have been other representatives there, but they are the only ones that I remember. Mr. Stetson, represented the Citizen National, Mr. Lewis, the Fourth National, Mr. Finley, the Macon National, and Mr. Taylor and myself represented the American National Bank. That was before any contract with the Commercial National Bank. As the result of that conference there was an undertaking by the National Banks with reference to the Commercial National Bank. I can't recall any representative of the Commercial National Bank being there at that meeting. Mr. Stetson was rather urging the American National Bank to take it over and Mr. Taylor and myself were objecting; and I suggested that one of the others take it over and that the American would help them; and Mr. Stetson replied that there was not any bank in the clearing house big enough for the undertaking except the American National Bank, and that we were the logical bank to take it over. I said then 'Can't the Fourth National and yourself take it over;

or you and the Macon National go together and take it over.' He said that it would not be practical for two banks to do it; that it was only practical for one to do it. Then he said, 'I tell you what I will do; so far as the Citizens National Bank is concerned, I would be willing to furnish you with my portion of the currency, or whatever currency I could spare you, furthermore, it will be willing to undergo its pro rata of any loss,
or stand for their pro rata of any loss that
778 might be sustained.' Mr. Taylor at once spoke
up and said—expressed his approbation of that, and said 'How about it Charley,' meaning Mr. Lewis. Mr. Lewis said, well the Fourth National Bank would do the same, and Mr. Finley, speaking for the Macon National, said they would too. The American agreeing to enter into the contract on the faith of those promises of the other Banks, is what I suppose, actuated Mr. Taylor. They had a lot of influence with me, it made me feel like it was a much better proposition, and it was the understanding, when I left, with the banks when I left, that they were to do it, they had not signed up them, but the Macon National signed up afterwards. The Citizen did not sign the paper that you prepared, they signed a paper that they had prepared themselves. The Fourth National did not sign up, and I think the guarantee fell down because of the failure of the Fourth National to sign up. I left for New York that afternoon, Saturday afternoon, and the trade with the Commercial National Bank was closed afterwards. After I had gotten to New York, I received the telegram from Mr. Taylor, R. J. Taylor, at the Hotel Knickerbocker, Monday morning. When I got back to Macon the Wednesday night following, I was very much disappointed in the status of the Commercial National Bank. The Commercial National Bank had been moved

down to the American National; they had—we just designated certain portions of the rear part of the office for the Commercial's force to work in; and I immediately went back there to look after the affairs of the Commercial. The Commercial was at that time engaged in paying the depositors as they would come in. The Commercial's own officers were back there while the paying off of the depositors was going on, among them were Mr. Lewis, Mr. DeBorde, and his young son, and young Mr. E. Y. Mallary, I can't recall whether Mr. Souder was back there, or not, but its possible that he was though. There was also a good many of the employees there, we kept them for a few days,
779 and by degrees we let them go, as the business decreased. I had general charge of that force, and they had a separate part of the banking room set apart to them. The way the depositors were paid off, was they would give checks for their balances, and it would be O. K'd by either teller or the bookkeeper of the Commercial National Bank, and when it was properly o. k.'d then it was handed to the teller of the American, and the teller of the American put it to their credit on the American National's books, and they were charged to the Commercial National Bank on the bank ledger of the American National, and when I returned from New York, I found the account between the two banks running as an overdraft on the American National Bank's books. The question of the correct way of keeping it was discussed with you (Mr. Park) or either Mr. Jones, I forget which, and whichever one it was asked me if it would not possibly be better to give notes and I asked one of you to let me keep the accounts just as it was being kept; I preferred it that way; it was more convenient, and I asked the question if it was not entirely safe and proper to do it that way; if it was I

preferred for it to be kept that way; and upon the assurance of our attorney that it would be all right and safe, why we let it go that way. It was more convenient keeping the accounts in the shape of an overdraft, than to take notes for the amount, because it would be easier to keep up with it, when the final settlement came that we would be in much better position to calculate what the Commercial National Bank owed us; it would be easier to calculate, in other words, we would not have such an interminable mass of notes, interest calculations and that sort of thing; it was simply the easier way to carry it in my judgment. The Commercial National was to be charged interest on the amount advanced by the American National Bank, seven per cent on the average amount due from day to day, but I do not recall actually charging it as I don't remember making any entries on the books myself. Regarding the question of calculating interest entered into the question as to whether I should take notes or should carry the matter as an overdraft, I thought it would easier to work it out on the overdraft plan. I remember that we discussed the matters of notes being taken very seriously, and it was because of the inconvenience of
780 it, and because you and Mr. Jones, or both of you determined that it would be all right as it was, was the reason it was not changed. I expect I am largely responsible for its not being changed. I did not make any change in the method of keeping the account after I came back. The account of the Commercial National Bank was kept as other bank accounts were kept. The assets of the Commercial National Bank were never incorporated into the assets of the American National Bank, they were kept separate. If a paper due to the Commercial National Bank was collected, the

proceeds were credited to the Commercial National's account on the books, the Commercial National Bank was given credit for it by the American, and not the party who paid the note. If less than the full amount was collected on the paper, the Commercial was given credit just for the amount that was collected. Whatever that was, the net proceeds of collection or sale, is my recollection as we tried to be fair and just and equitable in every transaction. I represented the American National Bank as liquidating agent on the Joint Committee with the stockholders of the Commercial National Bank, and I was chairman of that committee. When the question of settlements, where the full amount could not be realized came up they were not handled by the American National Bank, but my recollection is that they were invariably submitted to the committee. The committee's approval was always asked in these matters, as far as I recall. Mr. Dure, acted as Secretary of this meeting, Mr. Leon S. Dure, when Mr. McKay was not present. He was chairman of the Commercial National's committee, and Mr. McKay secretary of this committee, but Mr. McKay was absent several times, and Mr. Dure took his place. Regarding the contract that was worked out with the Capital Savings Bank, I remember that there was a contract, but I don't remember just the details, but as far as I recall that was submitted to and passed on by the committee, and the same time is of the contract with the Central Trust Company, and T. C. Parker and his various corporations. All of these important matters were regarding the transfer of the Mallary stock in the Mallary-Taylor Iron Works, I remember that was done, and I think was submitted to the Committee and authorized by the Committee. I don't remember just

how the indebtedness of W. E. Small, the Col-
781 lege property, was settled, don't recall quite the details, but remember we had it quite a while, and it was finally settled, the actual final settlement may not have been approved by the committee, except that the committee may have authorized Mr. Taylor and myself to go ahead and settle it; but I do not recall that. I remember the transaction; I think I closed the settlement with Mr. Small, after consulta tion with Mr. Taylor, but it was very probable that we were authorized by the committee to make such settlement. I do not recall whether the College Street home of Mr. Small's was taken over by the Commercial National Bank at the figure of $12,500.00, and that the Commercial then sold it to the American National for $10,000.00. Neither am I very familiar with the transaction in regard to the bank building, the Commercial National Bank building. The building was carried as an asset of the Commercial National Bank for a long time, it was carried as an asset just as the Commercial National Bank had carried it. I think it was transferred to the book of the American National Bank, but I do not remember the details, and I don't remember when it was done. I do not recall the liquidating committee of the Commercial National Bank or this joint committee of which I was chairman, charging off any considerable abount of assets of the Commercial National Bank, on the books of the Commercial, I don't remember anything being charged off except where settlements of individual notes were made. I don't remember about anything else, I could not recall even an instance where it was charged off the Commercial's books. There was a great deal of discussion by the committee with the regard to the uncollected assets of the Commercial National Bank, those that remained on

hand at the time, at all times. There might have been something said about taking them over at a valuation, but I don't recall it. Twenty-four hours after I got back from New York I became satisfied that the Commercial National Bank's assets would not pay the amount advanced by the American National. I made the reports to the Comptroller on behalf of the American National Bank, as liquidating agent of the Commercial National Bank, they were made under my directions and I think I signed them all. After looking over the reports which the liquidating agent made to the Comptroller of the Currency there is one of them, this one dated April 7th, 1916, that is my signature, covering the quarter ending March 31st, 1916. Here is one signed by Scott, I might have been out of town at that time; I do not recall these particular figures, they are something like the copies of reports actually made, and I take it for granted that they are the copies made. I can only answer to the ones signed by me, and I am reasonably sure these are all right too. That is the regular form used by the Comptroller, and I recognize those papers as coming from the American National Bank. I think they are copies of reports furnished. I am familiar with the method of keeping books which prevails with the National Banks, when a bank purchases a note or loans money on a note, it is put on the loan and discount account, but if it is a demand loan they put it on demand loans, and where it owns real estate, they put it on the real estate account, where they are permitted to own stocks and securities, they put them on the stocks, bonds and securities account. Where such things as real estate and stocks and bonds are held as collateral they do not appear on the general ledger of the national bank as collateral. We have a column on our loan and discount register, where the

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collateral is specified opposite each note. The amount and the value of the collateral is not posted on the general ledger, and is not posted on any account at all. When the employees of the Commercial National Bank came down to the American National, and had that window and part of the room set apart that I was talking about before, and brought the active books down there The American National Bank did not transfer to its books as loans and discounts the real estate or stocks or bonds or any of the assets of of the Commercial National Bank, unless we decided to discount some particular note. I could not tell you how long it was after the employees of the Commercial National came down to the American before I discounted any particular notes, or took over any assets, but Mr. Taylor may have taken over some notes on Monday, I was in New York and he might have taken over some notes on Monday, I was in New York and he might have taken over some then. When notes were taken over and put on the books of the American National Bank as loans and discounts, the Commercial
783 National got the credit on the overdraft. There was no general transfer of the assets of the Commercial National Bank to the American National Bank on the books of the American National, at any time.

Cross Examination.

We kept a collateral ledger, as I stated to Mr. Park on the edge, and were supposed to put on there all the collateral we had for outstanding obligations. The national bank examiner checked it up by the actual collateral, I don't think he bothered the book. He checked the collateral piece by piece, he did not go by

the register at all. My register of collateral was supposed to carry all collateral I had. If it were true that the American National Bank purchased the assets of the Commercial National Bank in the plan of consolidation, with an obligation to liquidate the assets of the Commercial National Bank and pay off its liabilities, and to account to the shareholders of the Commercial National Bank for any excess of assets over liabilities, it would have been necessary to keep the accounts of the income and the outgo, in order to make an accounting at the end. It was necessary to keep these accounts accurate. It might have been the same Thursday when I got back from New York, following August the 1st, that Mr. Taylor turned over the management of the administration of the Commercial affairs, or pretty soon afterwards, he stated that he had more than he could do, and wanted me to take charge of it. When we were examining the assets of the Commercial there that night, Friday night before Aug. 1st, there were several statements made by the officers of the Commercial to the effect that certain notes were secured with collateral. that they were under time lock downstairs and we could not see them. We had no way of verifying the value of certain collaterals. My recollection is that there was an amount, a big amount of E. N. Jelks we thought was secured; and when I got back from New York I found out there was little or no security, and of course that looked bad, and there were other accounts, but that is the one that was most prominent in my mind. I re-

784 member being a witness in the proceeding, the contest between the trustee in bankruptcy of E. N. Jelks and the American National Bank in regard to security held by the American National, wherein it was the contention of the trustee that the American National Bank had made a loan to E. N.

Jelks with every reason to believe that he was insolvent, the loan being used, with the knowledge of the American National Bank for the purpose of paying some indebtedness to the Commercial, thereby preferring the Commercial. I thought Mr. Jelks was entirely solvent, as Mr. Taylor and others who knew him quite well thought solvent and I thought they knew. The American National Bank had handled volumes of paper for Mr. Jelks, and I thought Mr. Jelks was worth from seventy-five to a hundred thousand dollars, over and above his liabilities, and I thought his papers were perfectly good before the Commercial failure. I thought they were good when I looked at it Friday night, independently of any statement, and Mr. Taylor put that paper down as good paper, and my information was based on Mr. Taylor's and others; I did not know Mr. Jelks' condition. Mr. Taylor stated that he himself thought Mr. Jelks was absolutely gilt edge. I think I recall testifying in the case of the United States against Mallary and others. I recall that Mr. Howard asked me the question "Mr. Hillyer, in the consolidation of these two banks, the taking over of the Commercial National by the American National, do you know anything about the indebtedness of F. L. Mallary or any of his concerns to the Commercial National?" and I answered "I did not until after it was taken over." I also remember he asked me "Were you present when they were canvassing what the assets of the Commercial National were?" and I answered "I was." He also asked me "Did you have or form any opinion then as to the value of those assets?" and I said, "I supposed those assets were good at the time, that is I remember thinking so.", that referred to the examination made Friday night July 31, 1914, I thought the assets were good at the time, and I testified to that. After I had been back two or three

days, the counsel for the American National Bank brought up that matter of giving notes. A note could
785 have been made out at the end of each day's transaction, as well as a check. I remember when I was on the stand for the first time, in the case of the United States vs. Mallary and others, I was asked by the district attorney, Mr. Donaldson, this question: The American National Bank became liquidating agent of the Commercial National Bank? and my answer was, I don't know that I can answer that question; they bought out the Commercial—took it over, when I made the remark, 'bought out', it instantly occurred to me that that might not be the correct term, but that was the first word that popped into my mind. It was not, it never intended to my mind that we had a purchase though, an outright purchase. When I was on the stand for the second time during the trial of that case, I testified that at one period Mr. E. Y. Mallary had denied that he was a member of the firm of Mallary Brothers & Company. I can't recall Mr. Howard asking me the question of "That was as late as when?" referring to the conversation that I testified I had with E. Y. Mallary, and me answering: "I don't remember; I think it was possibly after this consolidation", but I guess that testimony is right. I did not participate in the preparation of the advertisements of the American National Bank and the Commercial National Bank, which was inserted in the Macon press of August the 2nd and August the 3rd, 1914. Mr. Stetson stated that it was not practical for two independent banks to join in taking over the Commercial National. It is possible for two independent national banks to consolidate with the Commercial National Bank and they maintain their separate integrity, just as we did that bank, but we would have to work some to consummate it. Mr. Statson's objections

to the Fourth and Citizens taking it over was that it was not practical for two banks to do that, and it seemed to be accepted by the meeting. I think the one thing that actuated Mr. Taylor strongly in making this venture, was the promise made by the other national banks.

786 There might not have been any trouble about the whole thing, if Mr. Lewis had signed, as Mr. Statson told me that he would not sign unless Mr. Charles Lewis did. It would not have been as convenient to close out any stage of this proceeding by note, as by check, but it could be done, as it would less cumbersome to treat it as an overdraft than to make notes. As far as giving checks for the aggregate amounts or taking notes, one would be just as convenient as the other. As to whether it would be just as convenient to calculate the interest on notes as overdrafts from day to day, it would just cumber it up with a whole lot of other things. When we take checks they would be charged upon the ledger. Our notes are put on the ledger and we list them as well as checks, but when payments were made you would have to credit them. I don't think it would be just as easy to take the daily balances, and cover them by notes, as with checks covering the result of the daily transaction. The difference would be, the amounts are on the ledger and just as soon as the entry is made there it shows for itself; when you would have the notes with a lot of credits on them, and they would be harder to work. It would be just as easy to take a day's transaction of any given day, the income and outgo, and aggregate the amount and cover it by a note as by a check, representing the day's balance, of our attorneys have told us that we could calculate interest on the average balance of loans and discounts for the period—if they had suggested that,—it would have been the same thing. We

followed our attorney's advice just as said in my former testimony. They made the suggestion and I asked them to let me out of it.

Re-Direct Examination.

By Mr. Park:

The balance between the Commercial and the American was a fluctuating balance. It changed from day to day, and sometimes two or three times during the day. The balance would not actually change on the day until after the day's work; but if we made the entry just as soon as it came in it would have fluctuated during the day. At time the resolutions of the board of directors of the American National Bank were prepared—the resolutions that were passed August the 1st—and as to the agreement that had been arrived at between the officers of the Commercial National Bank and the American National Bank as to whether
787 the assets of the Commercial National Bank were to be purchased by the American National or whether the American was to lend the Commercial money on the security of its assets. I was not here when that was gone through with, I left Saturday. I don't think I was here at the time the resolutions were prepared, I am not quite sure. I never saw those resolutions before I left Macon. I did not know of any other agreement between the two banks when I left. There was a written contract signed between the two banks, but I do not remember the date. August the 11th was after I got back to Macon. I am not familiar with the agreement between the two banks, as to whether the assets of the Commercial National Bank were being sold outright to the American National Bank, or were being transferred as security for the moneys loaned to

the Commercial by the American, so you will have to let the agreement stand for itself, I am not familiar with it.

MR. R. C. SOUDER testifies:

Direct Examination.

(Indicating minutes) That is Mr. G. S. Derry on the minutes of August the 12th, 1914. The certificate to the minutes of September 30th, 1914, has Mr. E. N. Lewis' signature on it, and that is the Notary's seal on it. It is correct as to the signature of E. Y. Mallary, president, and J. J. Cobb, secretary, on the director's meeting of November 10, 1914, as I am familiar with their writing. The director's meeting of August the 12th, 1914 has Mr. E. N. Lewis signature on the bottom of it. The Directors meeting of August 1st, 1914, signed E. N. Lewis, also the certificate underneath, is also correct as to his signature. The directors' minutes of September 29th, 1914, with A. W. Lane and J. J. Cobb, vice president signatures on them is correct The minutes of the board of directors, containing a letter of the finance committee, dated July 14th, 1914, is Mr. Lewis' handwriting, and the letter of the finance committee, is that of W. T. Anderson and Leon S. Dure's signatures. The body of the minutes of July 1st, 1914, is written by Mr. Lewis and the interlineations in the letter to the comptroller of July 1st, 1914 is also Mr. Lewis' writing. When collaterals were sent to the correspondent banks as security for
788 loans by the Commercial National Bank, a list is made of them, with the number of the note; I think possibly the date, maturity and the

amount, and giving the name of the maker and indorser, and in some instances giving the collateral that went with the note, and those papers you have there are such loans. I can identify them by the interlineation of Mr. Lewis' hand writing. The letter is dated August 12th, 1914, to the National Bank of Commerce, of New York. The one of August 12th, 1914, that is the hand writing of Mr. Lewis on the letter, and the memorandum on it is 'remitted for 8/28; returned & destroyed', the National Bank of Commerce held the Commercial's note for $15,000. and on August 28th, 1914, the Commercial remitted, and the note was returned by the National Bank of Commerce and destroyed; that was not collateral, it was a straight note of the Commercial National Bank. This particular letter does not show whether it is secured by collateral which the Commercial had deposited or not. The letter of August 25th—is a list of collateral furnished the Guaranty Trust Company of New York; and has in Mr. Lewis' hand writing 'All these returned', and on the note of H. D. Johnson—opposite that note is indorsed "Wesleyan" and under the Macon Cooperage Company and W. A. Roush it has 'George' written in pencil in Mr. Lewis' hand writing. Another letter dated May 13th, 1914, addressed to the Guaranty Trust Company of New York, it has written in Mr. Lewis' hand writing 'Remitted 10/12; note returned & destroyed 10/19 all collateral returned," and on the one dated May 26th, 1914, is "Remitted 10/12; notes returned and destroyed 10/19." Another one dated April 8th, 1914 to the National City Bank of New York City, written in his hand writing, "Remitted for 8/13/14" is on the letter written on June 13th, 1914, to the National City Bank of New York City, in his hand writing is "remitted 10/12; note returned and destroyed 10/19." The letter dated De-

cember 2nd, 1914, addressed to the stockholders Committee of the Commercial National Bank is signed by E. P. Mallary, and the letter addressed to Leon S. Dure dated October 9th, 1914, is signed by L. O. Benton, and the pencil memorandum on the
789 bottom of the letter is that of Mr. Dure. I could not identify Mr. P. C. Hull's hand writing, unless I had some business he had in the bank to identify it by. I could not identify it by a written letter or just by his signature. Tendering batch of papers to witness. All the correspondence pertaining to my direct testimony came from the files of the Commercial National Bank. I recognize a great many of these people as people who did business with the Commercial National Bank. I recognize the Guaranty Trust Company, The National Bank of Commerce, the Coal & Iron Bank as having done business with the Commercial National Bank and correspondence passed.

Cross Examination.

As to whether this correspondence relates to new or old transactions, for instance the letter of May 13, 1914, where it was remitted for October 12th, that letter was closing out a transaction made prior to May 13th, 1914, and that is also true I presume with reference to the letter of May 26th, 1914, and also the same thing in reference to the letter of April 8th, 1914, and the same thing in reference to the letter of June 13th, 1914. Now the letter of August 25th, 1914, in which Mr. Lewis has noted the return of the collaterals furnished to the Guaranty Trust Company the letter of August 25th, 1914, it does not appear in this letter what time. but I would say that it was more than likely sent there as a substitution for collaterals held. I could

not say that it was a new transaction from the letter whether it was a new or old transaction. That was collateral furnished the Guaranty Trust Company on August 25th, 1914, and was for money borrowed from the bank. I do not know that the Commercial National Bank did not borrow any money from the Guaranty Trust Company after August the 1st, 1914, from the letter, but it is hardly probable that they did. Now the letter of August 12th, 1914, shows that it says 'We enclose you herewith our note for $15,000.00 due August 31st next, which kindly accept renewal of note for like amount which you hold due July 31st. Kindly return to us the old notes and also new notes—" The note was due July 31st; it was probably sent off some-
time in June or prior to June; it expired July
790 31st, and he was sending a new note on August
12th. I don't know whether at that time the American National Bank would probably have wanted to extend some of those loans in New York or not. The letter of August 12th, 1914, to the National Bank of Commerce of New York states, 'We are taking the liberty of enclosing herewith, as security for our indebtedness with you, the following papers'—and then itemizes several papers, aggregating $15,693.58—then says 'We think you will find all of these notes well rated with the exception of Mrs. Tero C. Amos, and we would advise that Mrs. Amos owns some of the most valuable real estate in this City and is worth over $100,000.00. Her paper is a prime risk; for that reason we hand it to you as collateral. If these are acceptable kindly return to us from among the notes now held by you all the August Maturities.' These were substitutions for maturities in August; they wanted them back for collection. If they matured in August, when they were made I have no way to tell. More than likely they

were made at least as far back as July 1914, any of the debts that they were given to secure. I don't know whether I was employed at Hardeman, Jones, Park & Johnston on the 2nd of January 1915 or not, but it was close about that time. I was not connected with the Commercial National Bank. On February 18th, 1915, I was with Hardeman, Jones, Park & Johnston. I was not employed anywhere on November 25th, 1914. I was with Hardeman, Jones, Park and Johnston on May 7th, 1915, April 6th, 1915, May 15th, 1915, May 24th, 1915, August 15th, 1915, all during the month of August, during the month of October 1915, February 1916, May 1916 and during February 1918.

Re-Direct Examination.

During the two weeks approximately, that I staid with the Commercial National Bank, after August 3rd, 1914, I don't know just what the practice was with regard to the letter correspondence—all of it—I was under the impression they were filing all of the correspondence with Commercial National, in the Commercial Building I had charge of some of the correspondence and it was filed every night after business,—I went up to the
791 Commercial National and filed it where it belonged, and it was my understanding that all of the correspondence was kept that way.

Re-Cross Examination.

I understood that the vault at the Commercial National Bank building was solely in the custody and possession of the Commercial National. Mr. Karsten did not have anything to do with Commercial National Bank at that time, and he did not have the combina-

tion of the vault I presume until several months afterwards. Mr. Karsten did have the combination of the vault when Mr. Scott wanted to get in there. While I was there none of the American National officials did not have the combination of the vault; they didn't have the keys. I don't know if Mr. Scott went in there, he might have gone in there with somebody, but he did not have any keys at that time, during the early part of August. The balance of the correspondence of the Commercial National Bank, is in the vault of the Commercial building. I did not get out all that has been put in evidence here, but I did get out some, but I don't think I got out any that has been put in evidence. The main thing I got out was the books, and the ledger.

Re-Direct Examination.

I could not tell from the letter of August 25th, 1914, that I said indicated a substitution of collateral, whether it was a new transaction or simply a substitution of collateral for collateral in an old transaction, but it seemed to be one or the other.

P. D. KARSTEN, a witness for Plaintiff, testified:

Direct Examination.

I was not employed by the American National the first part of 1914, but the last part of 1914. I went with the American National about August 1914. I was winding up the affairs of the Commercial National Bank within about a week after I went to the bank, they put me to that work, and my duties with the American National Bank were practically entirely with the Commercial National's affairs. The old bookkeeper and office force of the Commercial Bank had charge of the Commercial National Bank's books and papers when I went with the American, and Mr. E. N. Lewis was there. Mr. E. N. Lewis was acting right on as
792 Cashier, and practically in the same capacity of taking charge of the bookkeepers—taking of and managing the proposition, and Mr. Lewis continued about thirty days, but I don't remember the dates, but Mr. DeBorde staid there for some time after Mr. Lewis left, and Mr. DeBorde left about the first of January 1915. Mr. DeBorde kept the books up to the time Mr. DeBorde left. Mr. DeBorde kept the books with reference to loans and discounts; they had a regular individual bookkeeper that kept the individual deposit ledger for thirty or sixty days after August the 1st, 1914. After that bookkeeper left, the book was discontinued, it was wound up and nothing was left on it. As long as the book was continued as an active book the old bookkeeper of the Commercial National Bank kept it, I think his name was Cecil Thorpe. I remember I started to work on these assets of the Commercial about the latter part of August. I had been employed about a week previous to that by the American National.

I don't think Mr. Lewis staid there at all after I started in, he left about the same time I started in, and that was the latter part of August or the 1st of September. I took over the bookkeeping after DeBorde left on January 1st, 1915. Up to that time DeBorde had charge of the Commercial National Bank building and had access to its vault, and I got the combination and keys to the building the 1st of January, 1915. I did not handle the correspondence at all during that Fall but under my general oversight. Up to January 1st, 1915, I did not know every night after the close of business DeBorde or Lewis would take everything that came in during the day and carry it up to the Commercial National Bank building and file it away; just as though the bank was running and doing business up there; in other words they did not change the system of carrying the books, papers and letters and all, and they filed the copy letters, as there was not any place to keep them in the American. I have seen the files since I had charge of the keys. I assisted Mr. Scott in getting the correspondence out of the files, they were in the regular files at the Commercial National Bank Building. Most of the times the minute was in our vault; sometimes it was in your vault, and in one of the two places all the time, it was always under my general oversight. Up to January 1st, 1915, I did not know where the minute book
793 was. I don't remember that book there specifically, but it was one of the lot of books that belonged with the Commercial National Bank papers that were turned over to me. My duties on January 1st, 1915, were to take a lot of old papers that were past due, and go out and try and collect them, and I assisted in perfecting some settlements, but practically speaking, I was a collector of past due papers. When I collected a paper, I turned the money over to DeBorde, and he

would make a deposit at the end of each day of all money he took in; deposit it in the American National Bank to the credit of the Commercial, and that was the end of it. Of course, he made his records through his books, just as though the bank was in business. There was no change in the system that had been adopted after I took over the business. If I collected less than the face of the paper, when it was a compromise settlement and we released the man who was liable on the balance, we would make a charge of the balance to losses in settlements, and there was a special account open for that purpose. If there was just a part payment, and did not release the man that was liable on the balance, it was just left outstanding. We did not make any compromise settlements until later—in 1916 and 1917—and during that time every one I took up with them the committee of which Mr. Anderson, Mr. Dure and Mr. McKay were members myself—practically everyone that the committee had not met formerly and passed on. The book that I made my entries on was the domestic tickler. I took charge of the book the 2nd of January, 1915, and it is entered on the page on that day in my signature. This book shows all of the settlements paid, there is one, which is a collection of $3,525.00 on a note due by John F. Cone Company. In this case we simply credited the amount collected on that, credited it with it, to loans and discounts, and left the balance outstanding, but I did not charge anything off in this case. We have got entered here, by sale,—here is another F. G. Lawton, a collection of $250.00 on a note of $2,000.00, authorized by—F. G. Lawton—authorized by liquidating committee, represented by R. J. Taylor and Leon S. Dure. There is a collection of $984.00 on a note of Parish and Parker, a note of $2,800.00, in this case it was left outstanding

794 —here is a case, of a sale of stock, held as collateral; here is a case, the Southland Knitting Mills, notes amounting to $15,740.00 settled for $5,000.00—and charged off $10,740.00, and put $5,000.00 to the credit of the Commercial National Bank. There were no entires of those settlements made on the American National's books at all, nothing but the money taken in, just as though I deposited it myself. We continued the custom of making deposits to the credit of the Commercial National Bank, representing all the collections I made, whenever we had the money. While DeBorde or Lewis was there, while DeBorde was there it was paid by voucher of the Commercial National Bank; they would issue a voucher, just as a regular cashier's check, to themselves, and when it would go in there the American National would pay it, and charge it to their account; and then after DeBorde left, in order to simplify the matter, just make a charge against the Commercial's account, and issue the American's check to pay it. It was all carried in this one account against the Commercial National. The assets that I handled were kept entirely separate from the assets of the American National Bank, and they were not entered on the books of the American National at all.

Cross Examination.

I was employed by R. J. Taylor, and he instructed me to go into these Commercial National Bank collections. I went in there about the time Mr. Lewis went out.

Re-Direct Examination.

My salary was paid by the American National Bank, but I don't remember whether it was charged to the Commercial National Bank or not, but I don't think it was, I am not sure about it though.

795 R. J. TAYLOR, testifies:

Direct Examination:

I was President of the American National Bank during the year of 1914. I think I was familiar with the circumstances that led up to the contract between the American and the Commercial National Banks. I had heard a little something about the middle of July, regarding the Commercial National Bank calculated to injure the credit of that bank. A gentleman from Athens, Ga., who came down here for the purpose of collecting quite a large claim, sixty thousand dollars, I believe he said his claim was, made the statement that he was here for the purpose of collecting it and didn't propose to, or he rather intimated that he didn't care to leave without getting his money, I think the party's name was Brooks, but I don't know which one of the Athen's Banks he was connected with. I had a short conversation with Mr. Brooks, and he made the above statement. During the Spring or early summer of 1914, I recall making a loan to Mr. Nat Kewis, I can't say whether it was for the bank or not, it was a paper as I recall either indorsed by Mrs. Amos or Mrs. Amos' paper. The paper was brought to me by Mr. Lewis, the cashier, and I say I discounted, you know discount and loan, there is a little difference in them, if it was a paper signed by Mrs. Amos and indorsed by Mr. Lewis or probably a paper payable to Mr. Lewis signed by Mrs. Amos I discounted it— probably I could have put it up as collateral, but I don't recall how the transaction was handled. The amount was $20,000.00. I made Mr. Jelks, Mr. E. N. Jelks, a loan about the middle of July. Mr. Mallary and Mr. Cobb came to my house one evening about eight o'clock I would judge, they said that

Mr. Jelks had quite a large line with them and wanted to reduce it, and would like to know if I would make
Mr. Jelks a loan of Fifty thousand dollars. I
796 told them that—a good deal was said, of course, but I made a statement I would make them a loan of $25,000.00 based upon satisfactory collateral. The loan was actually made the next day by Mr. Hillyer, I was leaving Macon the next morning at six o'clock in my automobile for Hawkinsville, and I telephoned Mr. Hillyer that night to make the loan, and it was as I remember, Mr. Hillyer made the loan. It was secured by accounts receivable and mortgage upon some assets in Tampa, Florida. That was the loan secured by the Tampa business or the assets of that business. I afterwards made another loan to Mr. Jelks, probably the following week, through the Continental Trust Company, I think it was for $17,000.00, and that was secured by real estate. Referring to the testimony regarding the conversation he had with me in the Summer of 1914, in which there was some discussion of a possible consolidation between the Commercial National Bank and the American National, I think there was something of that kind said—Mr. Mallary and Cobb came to my house a second time, which was after the Jelks loan was made, and I think that was the night something of that kind was said. As far as I recall, that was the night before we went through the affairs of the Commercial National Bank, July 30th, as I recall, Mr. Mallary or Cobb or both said that they needed more money—my recollection is it was fifty thousand dollars—I won't say positively, and that if I would arrange for them to get that amount, they could get through with their affairs without any trouble, they thought—in other words, within thirty days, I think they expressed it, they would begin to get in collections and would be much easier. I do not

recall any earlier conversation in which a proposed consolidation of the two banks was discussed. Mr. Mallary stated however, my bank is in good shape and all right, but just simply said that there were some withdrawals that he was just not in a position to take care of and other demands that would likely come on him in a few days. They asked for a loan of $50,000.00. There was something said about a consolidation, I think that was the night, probably Mr. Mallary made a statement like this, as I recall. I want to retire from the banking business and give my time to some other matters and he would like to talk this matter over with me or take it up with me in the Fall. That is my recollection of his statement. There was not any agreement as to a consolidation that night. There was nothing else said other than the statement that I have just made. I refused to make the loan that night, but I suggested to Mr. Mallary that if his bank was in any wise bad condition, I would suggest a meeting of the Clearing House bank and to take it up with the
797 banks and discuss it with a view of course, of taking care of his bank and doing what was proper, and his reply was he would rather not do that, he felt friendly to the American National Bank and thought we were friendly to him, and he would rather for us to handle it, if it had to be done and asked—it was suggested, now I don't know whether he did it or I did it, that we go through the affairs of his bank the next night following but I don't recall which one suggested it, and I agreed to appoint a Committee from our Board of Directors that would do so. The purpose of going through these affairs, and looking over their papers was of course to see if we could give them further help, or additional help. I don't recall whether I saw Mr. Mallary or Mr. Cobb the next day, but I know

there was a committee appointed—I suggested that certain ones go with me that night at the request of Mr. Mallary or that was the understanding, we would go up that night. I met Mr. Mallary and Mr. Cobb the next night, Friday night, and others representing the Commercial National Bank, Mr. Nat Lewis, I think Mr. W. T. Anderson from the Commercial National, yourself Mr. Park and Mr. Scott, Mr. Hillyer and myself from the American National Bank. That night we went through the bills receivable and such papers that they had there. Mr. Nat Lewis produced the papers and called them out. Regarding classification, I usually do that, in going over the papers, I asked you Mr. Park I think to take Sheet No. 1—a piece of paper and marked it No. 1, and Mr. Scott No. 2, and Mr. Hillyer Sheet marked No. 3. But as to whether you were No. 1 or Mr. Scott, I can't recall, but I recall very well that Mr. Hillyer handled Sheet No. 3, and as Mr. Lewis would withdraw the note from his files, why he would give the name of the maker and the amount and how it was secured. Of course there would be some questions asked in regard to the collaterals probably and I believe I passed on most of it. I would suggest that you put that down on Sheet No. 1, as the case might be and so on. I don't remember what amount of paper was classed as No. 1, but I recall that in No. 1 and No. 2 was barely, or barely amounted to half the total amount of receivable, that is my recollection. The difference in
798 paper No. 1, 2 and 3, is that I regarded No. 1 paper as paper that I would have probably discounted in my own Bank if it was offered to me—paper I considered perfectly good. No. 2 was paper I would—had some little doubt about it, but still I thought it was fair paper—I am going by what I always do in classifying papers. No. 3 I considered doubtful and bad.

After the classification of the papers produced to me that night, I thought the Commercial National Bank were in a pretty bad condition. I presume we did have some discussion of the condition of the bank, but I recall after having finished the examination, that Mr. Hillyer and myself walked out in the hall of the building and I made the statement that we could not render them any further assistance, I didn't think, it was in a bad condition. I didn't see my way clear to do anything for them—I recall I made the statement, I think however, we ought to lay the matter before the Board of Directors, I would prefer, however to bring it before the Clearing House Banks. Still I went back in the room and made the statement as I recall that I thought the matter still ought be taken up with the Clearing House Banks. However I would take the matter and bring it before my own Board of Directors—that was about four o'clock in the morning or five—it was a very important matter—I would lay the matter before our Board of Directors and report later—I think, that was about the statement that I made. I don't remember what Mr. Lewis or any of the other gentlemen said that night about whether the bank was in position to continue business next day, but the statement was made by some official, as I recall, of the Commercial National Bank that it was very doubtful whether they would have—they had sufficient funds in hand to take care of the Saturday's business—withdrawals—and they would like to arrange a loan of—arrange for $25,000.00—a loan of some kind, and as I recall, we stated we would make the loan to them of twenty five thousand dollars, on some security or collateral. We made them the loan and they secured us with a deed for the Bank building, as I recall, I don't remember whether the deed was drawn that night or when. I promised the

Commercial that I would take up the matter with the Board of Directors of the American if they
799 wanted me to, and I called the meeting of the Board, as I recall for ten o'clock the next morning. At the meeting, the object was explained of the meeting of course, and I think you, Mr. Park, were the first man asked to make a statement, having gone through the affairs, and I think you made the statement, and Mr. Hillyer, possibly and maybe Mr. Scott, I am not clear as to Mr. Scott, but I am sure Mr. Hillyer—as to what was done. The question was discussed as to whether we could render them any assistance—further assistance and what we could do in the matter. The facts were of course placed before the Board of Directors as to the condition of the Bank, and statements were made, as I say, I am sure by you and Mr. Hillyer and I felt—I was called on to express myself. I made the statement that I did not favor it myself but I did not propose to place my judgment against the twelve or fifteen—ten or twelve—I think there were about twelve probably there—we had fifteen directors—against theirs—if they thought it was the right thing for the American National Bank to undertake to finance the proposition, why I would not raise any objection. There was also discussion of the assets of the Commercial National Bank, and I made the statement myself that there in my opinion would be a loss to the American National Bank of probably fifty to seventy-five thousand dollars—however that the American National Bank was able to make the loss, and for the good of the town and possibly to prevent other runs that might be made upon some other Banks, as well as our own, it might be good policy for us to undertake to liquidate the institution—I think that was about my statement. Regarding the stockholders' liability of the Commercial, you Mr. Park

made the statement that there would be no difficulty in drawing a contract that would hold the stockholders liable for their assessments—something of that kind. We did that before I made the statement—that statement was made before I made my statement. I would like to say without that statement I would have put my loss at a higher figure, estimating the loss. That was the meeting that the resolution authorizing the officers of the Bank to make a contract with the Commercial, was passed. There was no understanding between the officers of the American and the officers of the
800 Commercial National, up to the time of our Directors meeting. I can't state positively as to what was said, but I think the resolutions were drawn up Saturday night. The contract was signed or discussed or another contract made, but on the Saturday night, we had a meeting as I recall at the Commercial National Bank building—had a meeting for the purpose of endeavoring—finishing this deal or trade—whether it was now a contract drawn that night, I don't recall, or whether merely a resolution, but I remember we met that night for the purpose of entering into an agreement of some kind as to how we would take it over, that is my recollection, and the agreement between the officers of the Commercial National Bank and myself was, my understanding was we were to take the institution and liquidate it and pay ourselves for so much money that we might furnish to pay the liabilities, the depositors—everybody, and if there was anything left over it should go to the stockholders—that in a crude way is as I understood the trade. If there was a deficit, we expected to recover if we could from the stockholders, that was my understanding of the trade. On Saturday at ten o'clock in the morning I called a meeting of my directors and the matter was placed before them. After that had been

done, after a vote of my directors, we decided to render them some assistance in some manner, I don't remember—the resolution says that probably—our resolution on our books. We had a meeting that night and I stated to them on what conditions we were empowered to take over their bank, and they agreed to these conditions. The outlook on the general business conditions at that particular time, August 1st, 1914, was very bad, at the beginning of the war, war had been declared, I believe. As I stated before, for fear of a run upon some bank, or our bank, that probably our knowing that the bank—the mere fact of a bank failure in the city, conditions were such, I thought it advisable to take it over, and I think the fact that the war was on, and the general condition being bad, made it more likely than it would otherwise, I thought so. I don't recall
801 making the statement to Mr. Mallary, on the Saturday after I had gone through the papers Friday night, and expressing myself to him as being satisfied with the condition of the Commercial, I thought it was insolvent. Regarding certain conditions which Mr. Mallary says he exacted of me as a condition of my taking the Bank—these conditions being that the depositors were to all be paid, and that the same accommodations would be extended to the Commercial's customers that they had been enjoying from the Commercial, and third, that the stockholders would be protected, I think that is true, it was part of the contract we were to take care of the depositors. I do not recall Mr. Mallary saying that there were three things he wanted me to promise him, but it was understood that we were to take care of the liabilities. Mr. Mallary and the other officers of the Commercial were certainly asking us to render them some assistance, to help them out of their predicament, or trouble at that time. Immediately after

the adjournment of the directors of the American National Bank on Saturday morning, we called a meeting of the other Bankers and told them of the condition—or situation, at which they agreed at that time to furnish, in the event there was any run on our bank in any way, we were called upon for money by the depositors and that we could not raise it, they would come to our rescue and further it was stated if there was any loss, if the American National Bank should sustain any loss, that they would pay their pro rata part of that loss, according to the capital and surplus of each Bank. None of the officers of the Commercial National Bank were present. After the agreement was made between the Commercial and the American I was called upon to assist the Commercial & Savings Bank. The Commercial & Savings Bank and the Commercial National Bank were closely allied, but they did not have quite all the same officers, not altogether alike. I could not say that Mr. Mallary was president of both banks. I think Mr. Cobb and Mr. Lewis, also Mr. Mallary, were all three connected with both banks, there was little difference, I don't think Mr. Mallary was president of both banks, as I don't recall him being president of
802 the Commercial & Savings Bank. We made the same examination of the Commercial & Savings Bank that we did of the National, we went through the affairs, and the Continental Trust Company afterwards made a trade with it, and I was President of the Continental Trust Company. The books and papers of the of the Commercial National Bank were moved to the Banking House of the American, I think, Monday morning of August the 3rd, I believe they were, as far as my recollection goes. A few of the employees of the Commercial went along with them. I recall Mr. Mallary was there for a few days and Mr. Nat Lewis was there

for quite a while, I don't remember how long, though, I have forgotten, maybe two or three months, I am not clear as to that. We had some two or three of their clerks there for quite a while who had charge of their books kept the books as I understood. I personaly had very little to do with the handling of the accounts between the two banks. Mr. Scott and Mr. Hillyer, and especially Mr. Hillyer gave directions about those things. I asked myself that Mr. Hillyer take charge of that branch of the business, look after it, keep that somewhat under his supervision. Mr. Nat Lewis was the leading man and represented the Commercial National, in making the arrangements, working out the arrangements between the two banks, the details of the handling of the accounts and so forth. Regarding the notes to be given by the Commercial to the American, it was my understanding that the matter would be closed up by notes. I don't recall why these notes were not given, or neither do I recall whether the matter was discussed with Mr. Lewis or not. The way the customers of the Commercial transferred their deposits to the American, I don't know that I can name any special case, but a customer would draw his check, of course, upon the Commercial National Bank, having a deposit on their books, and if he saw fit to deposit with the American National Bank, he did so, but he could deposit it just as well in any other bank as he could in the American, as we could not prevent him from that. I can't say whether they were all deposited with the American, but I should think not, but I can't say positively. Regarding the debtors of the Commercial, the people that had
803 borrowed money from it, where the Commercial held notes of various people, the closing out of this outstanding paper, was handled in the usual way. If a man owed the Commercial a good large amount

of money, the American certainly would not just take him over without him saying so. Mr. Leon Dure was a director of the Commercial National, also a member of the stockholders committee. He owed the Commercial a right good sized sum of money, a big amount. I made the arrangements with Mr. Dure to take him over, not with the Commercial. I think it was some time after the bank had been turned over, I don't recall though. I don't think there were any settlements made immediately or very early after taking it over—settlements of that kind you understand. The customers made their arrangements when they wanted to continue lines of credit with the American National Bank. I can't say that I remember any special case where Mr. Mallary brought customers in to see me, but Mr. Mallary was around the bank for some days and would bring different ones in my office to talk to me on different lines, as I understand, sorter shake hands with them and meet them, you know give them a welcome, something of that kind. Regarding the contract marked Exhibit "A", that is the contract between the American National Bank and the Commercial National Bank, signed on August 11th, I discussed it with the attorneys at the time it was being prepared, at least that is my recollection. The paragraph in that contract in regard to the stockholders liability was discussed just before the signing of the contract, that was the one thing that I was most interested in, and I probably said more about that than anything else in the case. Mr. Lane, I believe, represented the Commercial Bank in the preparation of the contract. Mr. Lane was their attorney, but I do not remember discussing the mater with him at all. I might say I, as much as any one, was the cause of the paragraph with regard to the stockholders liability being inserted in the contract, in fact that was

part of our resolution, or the American National Bank's resolution, as I recall, based upon that. I don't recall talking with Mr. W. T. Anderson, a member of
804 the Finance Committee of the Commercial, before the meeting of their stockholders that was held on the 12th, but I talked to Mr. Anderson on August the 1st, a few minutes after the Clearing House Bank meeting, and that is the only time I recall. He was out in front of the lobby of the American National Bank entrance, at the time, when we adjourned, he asked me what we had decided to do. I told him that we had decided to liquidate the institution, if they wanted us to do so, and we would have a meeting, a meeting would be called that night for the purpose of entering into a trade or deal of some kind, something like that, he said, to use his expression, "Thank God". Before the stockholders meeting, I suggested that a committee of three be appointed for the purpose of looking after the affairs of the Commercial National Bank, a committee we could deal with and they did so—rather they appointed five at that meeting. After the appointment of that committee, we appointed a committee from the directors and officers of the American National Bank and we dealt with that committee. So far as the Commercial Bank was concerned, the dealings with the American were taken up with that committee and there was quite a number of matters taken up still with Mr. Mallary, Mr. Lewis and Mr. Cobb but primarily the dealings were with the committee. The ones put in charge as the representatives of the American liquidating the Commercial, were yourself, Mr. Park there was Dr. Lee and Mr. Hillyer and I think several others, they the three named were the members of the Committee representing the American. Mr. Hillyer was the active officer of the American. I had very

little to do with the detailed settlements of the Commercial's papers, I was called in by the committee somefew times, but I did not go into their meeting but two times. When some of the large important settlements the Parker matters or the Central Trust Company were closed up I think I was out of the City. I think that was during my absence on my vacation. I was gone probably a month or six weeks. After the liquidation matter had gone on for some months, or the beginning of the next year of 1915, I don't recall whether I attended a meeting of the Committee at which was discussed the question of the remaining assets of
805 the Commercial, but I know I was endeavoring to bring the matter to a close and I suggested that something of that kind be done, but whether I was at that meeting or not I don't recall. I remember about the sale of the bank building. My recollection of the way the sale of the bank building was handled, is I think, under your Mr. Park advice or the attorney's advice—you or Mr. Jones, I suggested the property be put up, advertised and offered for sale at public outcry, and that was done. I don't think that we had a bid, if it was—I recall I would say that Mr. Jesse Hart made the statement to me, I think, he was authorized to bid thirty thousand dollars for the building but knowing we had a fixed price on the building, he didn't bid or would not bid any more. I am not sure whether he made a bid or not, but it was withdrawn, it was not sold. A little later, I don't remember how long after that, the property was bought in by the American National Bank, at forty thousand dollars, as I recall. I don't remember the exact circumstances, under which that offer was made to the Commercial, my recollection is I discussed it more freely with Mr. Leon Dure than any one man and I made the

statement we would take it over at forty thousand dollars to close the matter up—I think he was the man I discussed it with more than any one else—but I might have done so with others. I am not clear as to whether a director's meeting was called to authorize the sale or not. I might have written Mr. Mallary a letter regarding the sale, but I don't recall it. Regarding Mr. Mallary's testimony, that my purpose in dealing with the Commercial or making the deal with the Commercial was to get the business of the Commercial, or to take over the deposits, well I don't think that was altogether my motive, but it had some bearing no doubt, any bank taking over another feels that they are going to get something in the way of deposits, which naturally has some weight, but in this case, my real motive was to protect the town, you might say, and the other banks —the other banks and which would protect the town, of course, believing that was a great probability of a run on some other banks would be made, if it started on one it might extend to all of them; that was
806 the real motive, as I recall it. I did not believe that the Commercial's assets were sufficient to pay its debt, I did not undertake to buy the assets of the Commercial. Regarding Mr. Mallary testimony that on the night that you went through the papers of the Commercial, Mr. Cobb asked me whether I thought the stockholders would get par for their stock and that I told him I thought they would, I don't recall it if I did, if I did it was based upon the statement the assets were good, from his statement, or his viewpoint, but I didn't have any such opinion of the assets. I don't remember making the statement that the stockholders would get par for their stock, but I think I made the statement several times to different people coming to inquire about the conditions of the bank,

who was interested, who were stockholders, and I usually made the statement, if the assets was as good as represented by the officers of the Commercial National Bank, they would probably get one hundred cents on the dollar—something like that. I want to say it was not the intention of the American National Bank's officers to make any statements just at that time that would be injurious to the American National Bank or any other bank or cause any trouble and I always—I did make the statement, I think, to different people that if the assets were as was represented by those people or were as good as they represented them to be, they would probably get—I say one hundred cents on the dollar I don't recall about that, but maybe I did, but I did not state that as my opinion, for I never had any such opinion. I found more about the real condition of the bank, just the losses after I learned the condition of Mr. Nat Jelks, I was very much surprised at his paper—I think he probably owed ninety or a hundred thousand dollars, I recall, and that proved to be very doubtful paper, bad paper, then I was certain we were going to sustain quite a loss. Before Mr. Jelk's bankruptcy, I didn't think it was possible to get enough out of the assets to pay the debts, to say nothing of the stockholders, I had put in the doubtful column more than half the receivables that wiped out the surplus and capital, more than that according to my figures and I could not have thought anything else. I don't remember saying
807 to Mr. Mallary after the failure of Jelks, T. C. Parker and Frank Mallary, that I would have to revise my estimate, that then I didn't believe on account of these failures, that the stockholders would get more than fifty cents on the dollar, if I made that statement, I made it based on Mr. Mallary's statement of the assets, not mine. I could not go back upon

my statement I had made to my own directors as we figured out the assets that night. I don't remember that I saw any more after the failure of these three large debtors, then I saw almost from the beginning; I don't say it boastingly, but I didn't miss the value of the assets leaving out the Jelks matter any great amount, I was deceived in the Jelks paper. I can't say that I rated the Parker or the Frank Mallary paper as being of any value, as I had them in the doubtful column or the bad column or in No. 3, I won't say all of the papers of both concerns, sometimes we would split those things, as I recall, it was a half way guess, we could not go through the assets as we should have gone through them, they didn't have the securities before me. Regarding whether any representations were made to me as to the character of Mr. Jelks' paper whether it was represented to me as straight or secured, it was represented to me most of it was drafts drawn against shipments of goods, I don't say all of it; I don't recall now, I know there was quite a number of drafts. A paper of that sort is usually considered first class by banks. This paper did not turn out to be that character of paper. He was drawing against his own concern, which I didn't know of course. He owned the concern in Tampa, Florida, it was equivalent to drawing against himself. After these large losses, these three principal lines, I don't recall what the estimate of the amount of money that the American would lose outside of its claim against the stockholders. After that, as I say, I had the same feeling all the way through the Bank was going to sustain a good big loss unless we recovered from the stockholders and of course added to that, the Jelks claim made it larger, that is the only thing I can say from the night I first went through the papers.

808 I don't remember whether anything was discussed between Mr. Mallary and I, as to whether there might be any loss to the stockholders of the Commercial National Bank. It was discussed with my directors, as to the losses of the bank, that naturally carried with it the stockholders would lose of course. I had several conversations with Mr. Benton, but not very pleasant ones, I don't recall any conversation that I had with him about the contract and about the paragraph reserving the right to assess the stockholders about the time of the stockholders' meeting. I remember Mr. L. O. Benton attended some of the meetings of the stockholders' committee. I was possibly in one or two of these meetings he attended, but I was not in all of the meetings. I can't say that I heard him make the statement whether he would vote for anything at all that was suggested or whether he always voted against everything, I have the impression though that was the statement that was made, but whether someone else told me or not, I am not sure. I don't remember Mr. Benton stating that he would not vote for anything because he did not want to effect his liability as a stockholder, but he might have said it, I would not recall it, as he and I were not very close along those days. The only thing I can recall that was said by Mr. Benton in any meeting was in regard to the Emmett Small property, house and lot on College Street, that is fresh in my mind. He went up, he and Mr. Dure, as I recall to look at the property. Mr. Small wanted $12,500.00 for the property—I was not willing to take it over at that price, I said I would give ten thousand dollars for it. Mr. Benton and Mr. Dure went and looked at the property and came back and said that they would recommend or facor the bank taking it over at $10,000 and allowing Mr. Small $12,500. Now that is about

809 the only thing that I can recall just now as to any dealings with Mr. Benton, because Benton felt very unkindly towards me from the very beginning, had some words one day in the office before the thing had got started. I don't remember any demand Mr. Benton made about transferring his stock in the Commercial.

Cross Examination:

I don't recall having any conversation with Mr. Mallary with reference to the loss or liability of the stockholders of the Commercial, and I don't know as I discussed that part with any of them, either with Mr. Dure or Mr. McKay or Mr. Anderson either. I think that was the understanding. That night, as I recall on the Sheet No. 3 there was somewhere very near $700,000.00—amounting to $700,000.00 of paper. I at a glance saw—the capital and surplus, was $400,000.00, we could wipe out the capital and surplus, if I was correct, with all those papers being bad, leaving them an indebtedness of $300,000.00. Now that is what I saw staring me in the face. Now how to overcome that $300,000.00 was an after consideration, you might say, in other words, which came up and was discussed at my directors' meeting. So now that is what I had in mind, and after the discussion came up at to the liability of the stockholders, feeling that we might realize $150,000 or $200,000 from the stockholders, that then we would be short and I made the statement to my directors in my candid opinion, if we took over the Bank, we would lose $50,000 to $75,000. I think everyone of my directors will remember that statement. I made that statement that I would arrive at it in that manner. I am not quite clear as the the amount of paper that was in No. 3,

I think in the neighborhood of $700,000. Regarding the statement I made to my directors, I am quite clear about that, it was about five years ago. I do not remember testifying in the Jelks bankruptcy matter that I thought the capital of $300,000 and $100,000 surplus would protect us. If I testified to the above, that my thought was that if the stockholders did not realize anything and if the surplus were taken up, that the balance of the assets would certainly protect the American National Bank. I had in mind just as much that
810 asset, the liability of the stockholders as I had any other asset. I can't say that sentence means that, I can't say that is what I meant. That question might not have been brought out as to whether you could, about whether there would be so much from the stockholders—so much from real estate, so much from bills receivable—I don't know that that was brought out at all. I might have made the statement in the Jelks case; As I stated to my Board of Directors, before we decided to take over the Commercial National Bank, in going through the assets very hurriedly, just in one night, not having the time to examine the securities, that there was a possibility of our losing fifty or seventy-five thousand dollars—on the other hand, there was a possibility of the stockholders getting $40 or $50 a share for their stock, and if it was in the Jelks case, that is true, at the time I certainly did not know, as I said, if I had known it to be an actual fact we were going to lose about $700,000—but I didn't put every dollar of the paper on there and say it was absolutely bad—as I stated there, I didn't have time to go through the assets and the collaterals. I made the statement to the directors that we were going to lose $50,000 or $75,000, but I recall saying at the same time that there was a possibility of the stockholders getting $40 or $50 a share

for their stock, and I don't recall testifying so in the Jelks case. I remember testifying in the Jelks case, and I may have made that statement to my directors. I don't recall testifying whether or not Mr. Mallary had talked to me early in the summer of 1914 about consolidating my bank with the Commercial National, but those things were time and again discussed with banks and since you mention it, I think there was probably on one occasion Mr. Stetson had a talk, which came to my ears, with Mr. Mallary about consolidation, but I can't say whether it was discussed more than once, it might have been, as those things are common. As I recall on July 30th, Mr. Cobb and Mr. Mallary came to my house for the purpose of asking if I would make them another loan of either $50,000 or $100,000. I have forgotten the exact amount. In the conversa-
811 tion Mr. Mallary mentioned, he says, my bank is in good shape, says all we need now is some temporary help, it should not be more than thirty days more before we begin to get in collections, then we will be in a easy condition, and then it is my intention to quit the banking business as soon as we get it in shape and devote my time to other matters, and says the question of a consolidation, we will be glad to consolidate or want to discuss the question of consolidation, I don't remember what was said about it, neither one of us discussed it but very little—it was no time for consolidating banks at that time, we could not tell what thirty days would bring about. The Commercial National Bank went out of business Saturday August the 1st, at least you might say that was the last day's business. Mr. Mallary had asked me for a fifty or one hundred thousand loan the night before. That was not the only time a loan was spoken of. He had been to see me a week

before you know, and Saturday morning after we had finished going through the affairs of the bank he asked me to loan him enough to take him through the day. Beginning over, on Thursday night at my home when they discussed the question of making or getting a loan of $50,000 or $100,000, we decided that night that we would go through the affairs of his Bank the next night, on Friday night, which we did, and on Saturday morning, about day light—four o'clock I said he, but I mean someone of the Commercial National Bank wanted to know if we would make them a loan of $25,000 to bridge over during the day, and we did agree to make them that loan, not knowing whether we were going to take them over, we made them the loan of $25,000, taking as security the bank building. I said that was the last time a loan was spoken of, I don't remember any other time except when we closed it up that night. As to liquidation of the Commercial National Bank being the predominent idea in my mind, I don't know what else to call it, except to say liquidation, in other words, we agreed to take care of their liabilities and to take the assets and hold them as collateral security, liquidate it. In the written contract, that was the understanding, I think it was in the contract that way, that
812 was the meaning of it at least. I went through the assets Friday night. I don't remember making a statement to Mr. Cobb or Mr. Mallary after that meeting, that I thought the stockholders of the Commercial National would be paid one hundred cents on the dollar, and I am willing to testify positively that I did not make such a statement. I didn't unless I made the statement based upon your statement—Mr. Mallary or Mr. Cobb's, that these assets are as good as you say they are, your stockholders ought to get one hundred cents on the dollar, I might have made it in that manner

—I won't say I did, but I certainly would not have made it in any other way. I knew from the examination of the assets were not worth enough to pay the stockholders one hundred cents on the dollar, I felt that way about it Friday night. I don't remember Mr. Mallary reminding me of my having stated that the stockholders would be paid one hundred cents on the dollar, after I had testified in the Jelks case. I don't remember he and Mr. George Jones talking about it, and Mr. George Jones stating to me that I said some time after taking over this bank, that the stockholders would get at least fifty cents on the dollar, if I made such a statement at all, it was based on somebody else's statement. After looking through the assets that night, I don't recall when I next saw Mr. Mallary but I am sure I saw him that night, Saturday night. I don't recall whether I saw him during the day or not, and I don't recall seeing Mr. Cobb during the day either, nor Mr. Lewis. The meeting was in the building of the Commercial National Bank, upstairs in the director's room Friday night, Mr. Mallary, Mr. Cobb, Mr. Nat Lewis, and W. T. Anderson, as I recall from the Commercial National, Mr. Park, Mr. Scott, Mr. Hillyer, and myself from the American National I remember those names—whether there was anyone else there, I don't recall. I can't recall whether there was a draft of a contract made that night, Saturday night or not, but there was some instrument of writing. Up there, a meeting of the directors of the Commercial National Bank was called,
813 they were in session up there, and my recollection is it was for the purpose of entering into a contract, or passing resolutions or something of that kind—I don't recall. I do recall that I was up there in that meeting and that Mr. Charlie Lewis came out, and that made an impression on me—obliged

to—asked me out in the hall—he made the statement, says, Mr. Taylor since seeing you this morning at the Banker's meeting, why I have talked to some of my finance committee, I think he said, and we have come to the conclusion that we cannot guarantee any loss farther than—as to the amount I can't say—I think it was ten thousand dollars, and I replied, I says, Mr. Lewis, it is rather late in the day now, after these people have gone through what they have and it is generally known about they have failed to come out and simply back down from the proposition, you have helped to get us into it, you are too late, the trade is now being consummated or fixed up in the room right now. I then turned my back and walked in there. I remember that distinctly because it made an impression on me. I don't remember whether it had been rumored that the Commercial didn't have ready funds to pay demands on that Saturday or not, but that is what I had reference to when I said that to Mr. Lewis 'what these people have gone through' as you can't keep a thing like that—it was out in town. I think the negotiations had possible become public, so that the Commercial was really doomed as a bank, in other words, when I made the statement to Mr. W. T. Anderson coming out of the Banker's meeting, that we had decided to take it over, and he came down and reported it as I recall, now, anyway that meeting was called for that night for the purpose of having from us a statement. The Commercial National Bank's directors were meeting that Saturday, that is my recollection, and I was at the meeting part of the time. I can't say I heard their resolution, I don't know that I was right there in the meeting every moment—I was there though. Regarding Mr. Mallary and myself advising in the matter that led up to their resolution—the turning over

the Commercial Bank to the American National, I don't know, as I had very little if anything to do in that, our attorneys were there. I don't know of anyone other than myself except our attorneys. I presume that our attorneys were there representing us to cooperate with the directors of the Commercial National in drawing up the proper resolutions to carry out our trade. as the purpose of not having them there was to close up the matter and enter into some instrument of writing, and I think, to see that the proper resolutions were passed by the directors of the Commercial. I don't recall anything I said to Mr. Mallary or anything that he said to me that night, but there was probably something said, but I can't recall it, neither do I remember of anything said by Mr. Anderson to me or my saying anything to him that night, I cannot say that I remember seeing either one of them that night, it has been too long. I don't remember what Mr. Cobb or any other officer of the Commercial National Bank said to me or what I said to them, I can't say positively I saw them or talked to them at all. It was my understanding that the loans that were applied for by the Commercial National Bank contemplated their continuing in business, the $50,000 to $100,000 loan, and the $25,000.00 that I let them have, and it was just an ordinary loan in the course of business. We might have taken up the affairs of the Commercial & Savings Bank right after we got through with the affairs of the Commercial National, that Saturday night, I am not clear, some of the affairs of the Commercial & Savings Bank I do recall were discussed on Sunday now, we were down there again. I can't say positively whether I met or talked any matter over with Mr. Mallary after the meeting or not, but I do recall on Monday morning Mr. Mallary

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was down there, I think at our suggestion. I suggested that he come down there. He mingled with the people in the lobby. The idea was to help pacify them, as we were certainly anxious to retain the deposits, we don't deny that. I think there was less than three hundred thousand dollars actual deposits, I mean individual deposits, real deposits, you can't figure on deposits. (Referring to Bank's Statement). Individual deposits $271,000.00 Bank deposits, we don't figure on them; Saving deposits, that is a good asset as a rule, certificates of deposit that as a rule is a good one—certified checks, cashier's checks, United States deposit, Bank overdrafts, that is where it hurts. I made a statement a moment about fictitious deposits. I want to explain that to you, for instance, they had a way, other Banks do it very often, a man will come in and borrow fifty thousand dollars with the understanding, I will always keep ten or fifteen thousand dollars to my credit. They loan him the money to make that credit and naturally of course it is no deposit, you can readily see that. They had a great deal of that. Just as a matter guess I had in my mind we might get between two and three hundred thousand dollars of deposits out of the transaction. We are always anxious to get that in running a bank. In Macon at that time, we used to boast of being the largest bank in Central Georgia, and naturally we wanted to strengthen our hold on that position, we were working for deposits all of the time. So that was one consideration to go into whatever trade was made for us to take over this bank. My recollection is that I made that statement, we made to the directors, while we might sustain a loss, that would probably return some nice deposits and would overcome maybe the loss after a while, if it was not too great. Another consideration

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that influenced me was the fact that Macon had had some severe bank failures and our own institution might be effected by a continued run, any bank would, I had the idea of self-preservation, in mind, if it had not have been for that I would not have wanted to do it at all. It is not unreasonable for one bank wanting to get the business of another bank, to take over its assets, assume its liabilities, agree to liquidate that other bank, and to pay the sharenolders of the retiring bank the excess that is realized from the liquidation—excess of avails over the liabilities of the retiring bank. If I was buying out a solvent institution, I would make an altogether different trade, I imagine, then I would from one I considered insolvent, if I was buying assets, it is one thing, and assuming the liabilities, in other
816 buying stock, not assets, I should have said, but buying stock in an institution, that carries with it of course, I would pay the liabilities, that would be I imagine a different trade. If I was making it, than one whether I was buying the assets, whether for a Bank called A, the purchasing bank, to take over Bank B, first having the officers of Bank A examine the assets of Bank B, for the purpose of determining whether those assets are sufficient in amount and in value to protect Bank A in assuming the liabilities of Bank B, provided the officers of Bank A find those assets sufficient in amount and value, and for Bank A to make an agreement whereby they take over the assets of Bank B, pay the liabilities of Bank B, liquidate the affairs of Bank B, and pay the shareholders of Bank B, any excess realized from the liquidation over the amount of liabilities which are discharged and paid off, is an unusual trade, will say that I don't know that I have ever heard of a trade quite like the one outlined, but I can't see why a trade of that kind could not

be made, especially if Bank B had a business that Bank A wanted to hold, and if Bank A wanted to acquire that business, they would very easily say, we will buy you straight out, give you so much for the stock, for the assets, in the event anything accrues to the stock after paying the liabilities, it will go to the stockholders. Whether or not the purchasing bank would take more of a risk in purchasing the stock at a given value with the agreement to pay over in addition to that purchase price whatever above that might be realized from a liquidation than liquidating a retiring Bank, assuming its liabilities, and agreeing to pay over to the shareholders of the retiring Bank whatever excess there might be of assets over liabilities, is a hard question for me to answer. The Citizen & Southern Bank, a Savannah institution, didn't have any established business in Macon, and that Bank bought the capital stock of the American National Bank agreeing
817 to pay $150 per share for it, thereby they assumed the liabilities of the bank, they didn't make a flat guarantee of $150 per share, they actually paid $50 a share, and when the trade was made, agreed to have the American National Bank liquidated and to pay over to the shareholders of the American National all in excess of the $150.00 a share that was realized from the liquidation. Of course, in that particular trade that I know all about, the Citizens & Southern Bank, in buying the certificates of stock at $150.00 per share, had a written guarantee the assets they would realize from the assets $150.00 per share—they had a written guarantee with proper security put up for that. Of course, Mr. Hurt took that risk, he was paid a consideration however, for taking that risk. The Citizens & Southern Bank was not willing to pay outright for the business of the American National, because they

refused me absolutely to pay over, I asked that question——I wanted to sell them independent of Mr. Hurt, and they paid Mr. Hurt to assume or take the risk, guarantee it. They paid a considerable sum of money for the business of the American National Bank and Mr. Hurt undertook to liquidate it and to guarantee $150.00 a share and used his judgment after having examined the assets and agreed to pay to the shareholders of the American National all in excess of $150.00 that the assets realized, that was the understanding if they could realize more than $150.00 per share, all in excess would go to the stockholders. When Mr. Nat Lewis went down to the American National Bank, I don't recall having any arrangement with him by which he would become an officer of the American National Bank. I don't recall telling him that he would be an assistant cashier of the American National Bank, there was probably some talk, I think at one time. I had forgotten all about it, something was spoken probably Mr. Lewis might be retained by the American National Bank if things worked out all right, I think that was after he went down there, the talk came up. Mr. Hillyer was in the Banker's meeting, as I stated a while ago, he went to New York Saturday evening at five o'clock,
818 when he left I didn't know whether the trade would be consummated or not, he went there for the purpose of arranging for money in the event I should need it—of course I didn't want to arrange for it unless the deal should go through. I told him that I would wire him on Monday morning that the deal had been carried through. I don't remember though specifically, the telegram, what it stated at all. He soon wired me back we could get the money from certain Banks and so on in the event we needed it. Mr. Mallary's statement to me all the times was the weak-

ness of his Bank was in having ready funds with which to meet unusual demands. The demands on his Bank had been somewhat abnormal, as I understood from Mr. Mallary, he was just temporarily embarrassed, from his statement. That embarrassment was made more embarrassing by some rumors that went around town that his Bank was in need of ready funds. It could be true that it was not the Bank that was weak, but it was a matter of meeting demands for ready funds. I was always afraid of rumors, I lived in dread of them when I was in the banking business. Immediately after the business of the Commercial was taken over by the American, different people commenced to inquire of me from time to time, and the people would inquire also about the stock, but it was very common for anyone to ask. I think there was some stockholders that asked that question, I would not say positively, I can't recall any one person, but I think so. I don't remember what kind of an answer I gave them in every case, but as I recall, as a general proposition, I made this statement, for the reason as I stated a while ago, I certainly didn't want to make the impression in the City of Macon immediately after taking it over, that we had taken over a Bank in a very critical condition. We didn't want the impression to get out we were trying to keep down anything like a run or trouble—I invariably replied, as I recall, to any one that asked me—from Mr. Mallary's statement or Cobb's or some of the officers that if the assets were good as they said, they were—there was a chance for the stockholders to get one hundred cents on the dollar, but I had gone through the
819 assets very hurriedly, I was not in a position to say myself, I could have said a great deal more. I knew the stockholders of the Commercial held a meeting to ratify what had been done. I did not

attend any of their meetings. I don't recall whether I gave the stockholders that made inquiries of me, my individual views that were set in my mind or not, I didn't if I could help it. It would not help the cause by doing so. The impression seemed to be, as I remember, that we had, as one man put it, made another scoop—the American National Bank was going to make big money out of it—I didn't care about that—I would rather have that impression going out than that we were going to lose money, and I humored that report as much as possible. My recollection as to the number of dollars in thousands there were in there than lists Nos. 1, 2 and 3, that there was over $200,000. in No. 1, very little difference in No. 2, and somewhat about, not quite $700,000 in No. 3. I don't think as I recall that No. 1 and No. 2 amounted to as much as No. 3, I am sure that I am right about that. I think there might have been for two or three days after we took over this business the Commercial National Bank, beginning on August 3, 1914, that we employed more than two or three men, I think it narrowed down to probably two or three after the rush was over. If I bought Mr. Dure's note from the Commercial National Bank, when it fell due, whether I would not just let it stay there in a past due state or not, would depend somewhat on the nature of the note, for instance, if it was secured by a mortgage, second mortgage something of that kind, we might take it over, thinking likely the Commercial Bank would not have carried it over without some reason—I am just stating that from what we generally do—that is if it was past due paper in their bank—we took it from the Commercial National Bank as a past due paper. In good banking we would renew the note unless it became unsafe to do so, unless it was a paper we could not afford or didn't think we could

afford to renew we would call on Mr. Dure. Whether we would undertake to collect it or have it renewed, would depend entirely upon the understanding we had with Mr. Dure at that time. After I bought it, after it went into the American National Bank, I broached the deal with Mr. Dure, I don't recall, but I guess I was present the Saturday night when I would not say that was or was not there. I imagine I was with Mr. Park, Mr. George Jones, Mr. Dure and Mr. Anderson, on Saturday night, although I have no recollection of it right now though. I imagine I was consulted about those two advertisements, although I don't recall that, but I imagine I was consulted though. I had lost a great deal of sleep about that time, I was worried, I don't remember whether I was present at the time that was written or not. I don't remember taking the advertisements to the Macon Telegraph and had them inserted for that Sunday morning's edition, but I might have, I don't have the least idea about it, it is not clear to me at all about those advertisements. Mr. Hillyer was our advertising man, he attended to all that kind of business, whether Mr. Scott prepared the letter to the stockholders and customers of the Commercial and presented it to me, I don't recall—that is a matter I would have passed very quickly, and probably dismissed it from my mind and never thought of it any more. The Commercial & Savings Bank was not as attractive a proposition as the Commercial National, I thought they were in worse condition and I made that statement, I was absolutely not anxious to get that bank, I was contrary to it. I called to one party not to vote. I would not vote because I would not declare myself in favor of it. I am speaking of the Continental Trust Co. directors' meeting. Mr. Charlie Lewis was in there at the meeting of the Commercial & Savings

Bank. He and Mr. Stetson were both there and went through the affairs of the Commercial & Savings, they were not connected with the Commercial & Savings, officially. I certainly did not ask Mr. Stetson that Sunday morning to assist in getting the Commercial & Savings Bank, when I saw Mr. Lewis. It did not occur to me that Mr. Lewis was there for the purpose of trying to trade for that Bank or getting the Commercial & Savings Bank, and I did not ask Mr. Stetson to assist me in getting the Commercial & Savings. It was generally understood I was not going to touch it. Mr. Stetson went to work and did more than any one lese taking and getting certain stockholders and directors
821 possibly to guarantee $100,000 as an indemnity for us to take it over, and went off in the room with them, and made a statement of what he said to them, and Mr. Lewis was asked to take it over, if he would consider it. We all went home Sunday to dinner and came back with the understanding he would decide whether he would do it. He changed his, said he would not. I do not remember telling Mr. E. A. Sheridan, within two or three days after the American National took the Commercial National, that the Commercial's assets would pay the shareholders one hundred cents on the dollar, neither do I recall telling him, after I found out the disclosures from the Jelks' failure, that it would not pay in my opinion fifty cents on the dollar, I don't recall any man's name that I talked to. I think Mr. Joel Hurt is the real party at interest in this case, the plaintiff. The stockholders of the American National, with the trade that they made with Mr. Hurt, are interested, of course, in this suit, but I don't know that any of them expect anything. Regarding the state of Mr. Hurt's liquidation of the American National and how much he has derived from it, I have heard that he

is far below his $150.00 guarantee on the American liquidation. I haven't been over that, I really don't know.

Re-Direct Examination.

I do not recall any conversation I had with Mr. Sheridan. With reference to Mr. Stetson and Mr. Lewis —C. B. Lewis, and their connection with the taking over of the Commercial & Savings Bank, I did not have any desire to take over that Bank. It was only through Mr. Stetson's efforts that the other National Banks guaranteed the American to the extent of nearly $70,000.00 and the stockholders guaranteed to the extent of $100,000, and it was after that the Continental agreed to take it over after having a guarantee of $100,000 made by certain stockholders and a guarantee from the other National Banks—The American National Bank as well participating—as to making up whatever loss might be—there was not any $70,000 stated, as I recall—it happened to work out about that. It
822 did amount to that, but there was nothing said about that at the time the guarantee was made. I regarded that bank as being in very bad condition. With reference to Mr. Dure's account, I don't think it had been taken into the American National. The accounts of the Commercial were not taken into the American, they were taken in as well as I can remember as each settlement was made and came back, in other words, I would not have loaned a man $1000 to take up his $1000 note in the Commercial National Bank without making some arrangements for it. The papers were kept separate as Commercial Bank papers, as far as I recall that was a matter of detail with the others. In some cases, the American National lent to various people

amounts of money in order that they might pay what they were due the Commercial, but I don't really recall the names of any right at this moment when we did loan to—it is barely possible Mr. Dure was one of them—I am not clear as to how that was done. I don't remember how the transaction with Mr. Emmett Small, by which we took over some real estate, was made, we bought the property for $10,000 and Mr. Small got credit for $12,500 on the Commercial National Bank's books, but he owed a great deal more than that, I don't recall how he got the money to pay the balance back. I do not remember now whether the American loaned it to him or not. Whether I gave the stockholders of the Commercial National Bank any information before their stockholders' meeting as to the condition of the Commercial, or if I kept anything concealed, I don't remember unless you would call what I have stated there concealed; I don't think I would have made the statement baldly in my opinion they would get one hundred cents on the dollar, it would certainly have been a very big false statement. I had an auditor employed to examine the affairs of the Commercial shortly after it was taken over, that was one thing I myself did, after consulting with I am sure, Mr. Lewis and possibly Mr. Mallary or Cobb too both thought it ad-
823 visable to have auditors put in charge of the Commercial National Bank's books and render a statement,—audit. I don't remember whether that audit was completed at the time of this stockholders' meeting and furnished to the stockholders at the meeting. Mr. Nat Lewis was never elected assistant cashier or never held an office with the American National Bank. There was no agreement that he should be elected assistant cashier before the trade was consummated, I thought at that time very highly of Mr. Lewis, thought

he was a good, valuable man—that is my recollection of it—there was some little talk, probably between him and me, as to maybe some day we might offer him a position in the Bank—I don't remember now in what way—but I have a faint recollection of that only, but it never materialized. The open deposits, individual deposits subject to check, are usually considered the most valuable assets of a bank. They amounted to $271,929.18. The savings deposits amounting to $75,000.00 were also of particular value, and the certificates of deposits, was also a good account, that amounted to $75,597.24. There was nothing else as the bank deposits don't amount to anything, they were very often a liability and cost you something before you get through with them. The accounts that I regarded as valuable amounted to something like $400,000.00, according to these figures it would be about four hundred and odd thousand. There was quite a number of the individual deposits appearing as open deposits subject to check which was left there for protection on certain concerns, some as much as $15,000. Although their individual deposits appeared to be $271,000 actually, they were not that much, not what I call deposits. There are different ways, for instance, the Bank man will say to a man, our rate is eight per cent for money, however, if you will maintain a balance of ten thousand dollars here, we will loan you $40,000 or $50,000 and we will charge you seven per cent for maintaining that balance—it kind of evens it up—another time a bank will say if you will maintain a balance of more than 20 per cent or 25 per cent we will loan you money at six per cent, but you must keep a balance at all times here of a certain amount—a minimum balance—that helps a bank man swell his deposits of course, which they are all working for. These balances were built up by showing

824 these loans against the balance, as I recall it was $15,000 for Mr. Jelks. I won't say the amount, as I have an impression that it was probably that or maybe more than that amount with him, I am not sure as to that. I am under the impression that it was a gathering of the Commercial National Bank's people on the Saturday night, and we did go through the assets of the Commercial Bank that night, that is my recollection, although I cannot say that I am correct, but the papers were signed up or some papers, my recollection is, that night somewhere, I think I was there. I can't even say the resolutions of the directors were signed, I can't say that anything was really signed, it is my recollection that it was the object of the meeting, I am not clear. I remember the American passed a resolution the Saturday morning at ten o'clock. My recollection is that the Commercial met at night for a similar purpose, it might have been in the day though. I remember the night meeting. I remember Mr. Lewis coming there and disappointing me so, that is what I recall. I am not sure at what time the Commercial National Bank's directors met, I think it was at night. You asked me the question of them having a meeting in the day time there, but I don't recall it. I attended the meeting and something was signed but it is not clear to me. I don't remember whether the officers and I got together after the two directors' meeting had been held and agreed on a trade or not, I can't remember anything about meeting with the directors or even discussing it with them or anyone as to the trade after our—after the matter was passed by the Board of Directors, we were to do it—everything else is kind of like a dream with me—I think our attorneys were authorized to go and close the matter up and did take it up with the directors, I would merely

say that was about the way of it, I don't know whether that is true though. There was some conclusion reached and we took it over, the condition was what the American National Bank would do after having talked with the Clearing House Banks. Then we had my recollection, the resolution of the American National Bank so stated, in the event the other Banks would participate or help—something like that. Anyhow after that was held, we notified them, as I now recollect, telling Mr. Anderson. That is as far as I can go. As to when a meeting was held, who was present, I don't re-
825 call anything about it, when any contract was signed, unless it was done Saturday night. My impression was we all met there for that purpose, still I cannot remember much about the meeting—I remember more particularly as to Mr. Lewis and somewhat as to the Commercial National Bank's affairs we went through afterwards, now that is the extent of my memory. My recollection is that after the resolution had been passed by the American National Bank as to what we would do, upon what terms, conditions and so forth, the matter, as I wou[illegible], was absolutely in the hands of the attorneys to close up—that is my recollection—and I don't recall discussing it with anybody at all. I know I did read the contract after it was drafted but I don't even remember that. I know that I insisted and I said to you every time, I am basing this deal somewhat on your statement that the stockholders of the Commercial National Bank can be held for their liability. We began liquidating the Commercial Monday morning, August 3rd. I always considered the Bank in business in a way, it is in business now if they have not abandoned it, but the liquidation was begun on August the 3rd. They are in business now, in a way, if they have not surrendered the charter. Regarding

the American lending a man money to pay his debt to the Commercial, when that was done, whether or not it accomplished the same results as if you had renewed his old liability to the Commercial, indebtedness to the Commercial, in the American National Bank, or whether it was just taking up that much of the assets of the Commercial and I had the paper—the obligations was cancelled with the Commercial and was existing in the American National, will say, if it was done that way, it would certainly cancel the obligation as far as the Commercial was concerned, if it was done in that manner.

826 Section I.

Plaintiff introduced in evidence the audits of the Commercial National Bank made by Alonzo Richardson & Company.

One of these audits was dated August 1, 1914.

One was dated August 15, 1916, and the other, which was a statement of the receipts and disbursements was dated August 15, 1916.

These audits contained the matters testified to by Mr. Creed Taylor.

Plaintiff introduced in evidence the statement of Alonzo Richardson & Company in the matters of the Commercial National Bank.

The first audit, the amount of the statement being $296.95, which was so testified to by Mr. Creed Taylor.

Plaintiff offered in evidence the register of drafts drawn on the Commercial National Bank on the Coal & Iron Bank of New York. The general draft register

on the various banks with the cancelled drafts attached to the stubs drawn by the Commercial National Bank on sundry foreign banks.

Plaintiff introduced in evidence the Individual Ledger of the Commercial National Bank No. 15 A to K, and Individual Ledger No. 15, L to Z.

Plaintiff introduced in evidence the Individual Ledger of the Commercial National Bank, A to K No. 16, this ledger being a consolidation of the two Individual ledgers.

Plaintiff introduced in evidence general Ledger No. 8 of the Commercial National Bank and the general ledger of the Commercial National Bank No. 9.

Plaintiff introduced in evidence the Savings Ledger of the Commercial National Bank, marked "Domestic Tickler No. 1."

Both of the domestic ticklers, Savings Ledgers.

Plaintiff introduced in evidence Statement Book No. 4, of the Commercial National Bank, the same containing the daily statements of customers.

827 Plaintiff introduced in evidence the Register of Drafts of the Commercial National Bank on the National Bank of Commerce, New York, containing the register of drafts drawn by the Commercial National Bank on the American National Bank.

These books contained the matters testified to by Mr. R. C. Souder, and Mr. E. C. Scott.

Plaintiff introduced in evidence the drafts drawn by the Commercial National Bank on the American National Bank. These drafts having been identified by Mr. R. C. Souder.

Plaintiff introduced in evidence the checks of the Macon Clearing House Association on the Commercial National Bank, identified by Mr. R. C. Souder.

Plaintiff introduced in evidence the individual statements rendered by the American National Bank to the Commercial National Bank, showing the statement of the account covering the period from August 1, 1914, to March 31, 1915, which statements were identified by Mr. R. C. Souder.

Plaintiff introduced in evidence the Reconcilement Sheets sent out by Commercial National Bank to the various banks and returned by those banks to the Commercial National Bank showing statements of accounts with Commercial National Bank.
These reconcilement sheets were identified by Mr. R. C. Souder.

Plaintiff states he offered all minutes books yesterday.

Pltf. offers these books of Commercial identified by Mr. R. C. Souder:

The Receiving Teller's Cash Book No. 7.
The Collection Teller's Cash Book No. 7.
The Mail Teller's Cash Book No. 7.
The Paying Teller's Cash Book No. 7.

The Register of expense vouchers showing both the general expense of the bank and expense of the bank building.

The expense vouchers or checks.

828 Plaintiff introduced certain bank sheets; the same being sheets from the ledger of the Commercial National Bank covering the account between that bank and the American National Bank from August, 1914, to December, 1916, and being the same sheets as were identified by the witness E. C. Scott, and being the originals of those already identified by the testimony of the witness Souder and which he swore came from the records and papers of the Commercial National Bank.

Plaintiff also offered the ledger of the American National Bank showing how this account was kept; also the two ledgers of the American National Bank beginning August 3rd, 1914, and running through until the date on which the same were offered in evidence, showing the account of the Commercial National Bank for the most of that period included under the head of 'due from banks', and from December 7th, 1916, under the head of 'due by Commercial National Bank.'

Plaintiff also introduced a sheet containing list of loans and discounts of the Commercial National Bank, which list was made up by Mr. Dunlap, a certified public accountant and which the witness Scott identified; the witness Scott having further testified that he checked over the same and that it is a correct list of the loans and discounts of the Commercial National Bank up to the date it was made; Mr. Scott having made additional entries on said sheet consisting of payments, set-

tlements, etc., so as to bring it down to date. It was made up Dec. 31, 1916, and is brought down to date by the entries on there by Mr. Scott, and we offer the whole book, showing the outstanding loans and discounts of the Commercial National Bank. We also offer this list made up by Mr. Scott.

Plaintiff introduced in evidence a statement made by the witness W. E. Bozeman, showing receipts and disbursements of the Commercial National Bank on the books of the American National Bank from December 7th, 1916, to date of the testimony.

Plaintiff offers list of doubtful assets testified to by Mr. Scott.

829 Plaintiff introduced six receipts from the Treasurer and Assistant Treasurer of the United States beginning August 13th, 1914, and running through August 27th, 1914, for various amounts deposited with the Treasurer by the Commercial National Bank; all these receipts were similar in form, one reads as follows:

"Office of Assistant Treasurer U. S.

August 13, 1914.

I certify that the Commercial National Bank, Macon, Ga., (through this day) deposited to the credit of the General Account of the Treasurer of the United States Nine thousand seven hundred sixty-one 11/100 Dollars as a transfer of funds on account of deposits, for which I have signed duplicate certificates."

This receipt was signed by the acting Assistant Treasurer of the United States.

Plaintiff introduced 22 letters as coming from the files of the Commercial National Bank; they being the letters identified by the witness R. C. Souder and referred to by him in his testimony. One of these letters (not an original, but a carbon) written on the Commercial National Bank stationery with the initial 'L' in the corner, signed 'Cashier' is as follows:

"Coal & Iron National Bank,
New York City, N. Y.

Gentlemen:

We are enclosing you herewith as security to our indebtedness with you several notes, as listed, aggregating $12,450.00. If agreeable to you, kindly return to us from the collateral which you now hold all of those bills maturing prior to November 15th next, aggregating $9948.41.

With reference to note of Mrs. Tero C. Amos, which we are enclosing you, we respectfully advise that Mrs. Amos is a large real estate owner of our City, and is worth easily $100,000.

The collateral on note of F. A. Guttenberger Co. is held by us for your security and subject to your order.

Thanking you for the favors extended us, we are

Very truly yours,

830 .....,
L/D"

Another of said letters is as follows:

"Coal & Iron National Bank,
New York, N. Y.

Gentlemen:

We are in receipt of your favor of August 28th, returning to us from collateral previously held for our account six notes as listed. We have also had delivered to us, by the American National Bank, notes of Georgia Pulp & Paper Mf'g. Co., $324.53, forwarded by you on August 27th, we having made with you satisfactory substitution for all these items."

Very truly yours,

L/D"

Cashier.

This letter is dated August 31, 1914.

Plaintiff introduced 27 other letters mainly correspondence from banks to Commercial, all dated after the contract of August 3rd, and each run on through until October, possibly November.

Plaintiff introduced two other packages, the first containing 25 letters, and all being, I believe, carbon copies reported to be signed by the Cashier, and directed to various customers of the Commercial National Bank; and the other package being 16 in number and being in large part letters from the customers directed to the Commercial National Bank or E. N. Lewis, Cashier. The carbon copies of letters are usually demands for the payment of matured paper or matured paper or maturing paper. These letters run from August 12th to October 27th.

Plaintiff introduced in evidence certain letters from the Comptroller's office, and carbons of the replies, the

replies being signed by E. C. Scott, Cashier, and the letters being directed to the American National Bank, they being statements called for by the Comptroller of the Currency; the first being dated September
831 12th, 1914, and the last November 27th, 1916.

Plaintiff offers 14 reports of the liquidating agent of the Commercial National Bank covering quarterly periods.

Plaintiff offered in evidence four additional reports; the same being reports of the liquidating agent of the Commercial National Bank made out at the end of the quarter four times a year; the original of these being on file in the office of the Comptroller. These statements, among other things, contain a statement to the effect that on June 30, 1917, the Commercial National Bank owed the American National Bank $317,221.77 at the beginning. This was reduced by collections $853.57, and at the end it showed $316,368.20. The balance on the last one dated June 30th, 1918, carries an item indicating that the Commercial National Bank owes the American National Bank $309,811.71.

832 Defendants introduced in evidence the letter referred to in the testimony of E. C. Scott, Cashier of the American National Bank, headed "The American National Bank of Macon, Macon, Georgia, August 1, 1914, and which is as follows:

"We take pleasure in announcing that this bank has absorbed the Commercial National Bank of this City. On and after this date all checks against deposits in the Commercial National Bank will be honored upon presentation at this bank.

We are greatly pleased to have your account, and promise you the same courteous and liberal treatment which we have always endeavored to accord to our customers. It is worth something both to a business and an individual to have a checking account with the largest and strongest Bank in Middle Georgia. With a combined Capital and Surplus of over One Million Dollars and with resources now increased to nearly Five Million Dollars, and with our splendid equipment, we are in a position to extend to our customers every accommodation consistent with sound banking.

We hope you will come in and see us next week, meet our officers and employees, and establish banking relations with us.

With best wishes, we are,

Yours very truly,

E. C. SCOTT, Cashier."

833 Defendants also introduced in evidence letter, of which the foregoing is a copy, and an envelope in which the same was contained, addressed to Prof. J. C. Hinton, Macon, Ga.

Defendant offers notice of stockholders' meeting called for August 12, 1914, sent out by Cashier of Commercial National Bank and the envelope in which it was mailed.

Defendant offers letters of E. N. Lewis, Cashier of Commercial National Bank, dated Aug. 1, 1914, stating arrangement between American National Bank and Commercial National Bank and the envelope in which it was enclosed.

Defendant offers notice of Stockholders' meeting of Commercial National Bank to be held on September

30, 1914, identified by Dr. Hinton and the envelope in which it was enclosed.

834 Defendants introduced in evidence an advertisement which appeared in the Macon Telegraph on Sunday, August 2, 1914, occupying approximately a half page of the paper as follows:

"To Depositors and Customers Commercial National Bank, Macon, Georgia:

In order to better serve the business interests and people of this community and section, we are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National Bank of this City has been effected. The assets of the Commercial National have been taken over, and we will take care of all the business formerly handled by the Commercial National. Our facilities for handling this extra large volume of business are the very best, and with the addition of these deposits, the pre-eminence of the American National as the largest bank in Central Georgia has been increased.

The money on deposit with the Commercial National has been transferred to us, and we stand ready to pay your checks against same, and to handle any other of your banking business which may be desired.

Checks should be written on the blanks of the Commercial National as heretofore until you give directions for the transfer or the depositor makes other arrangements.

We invite you to come in and see us, and if we can be of service to you it will give us great pleasure to know it.

AMERICAN NATIONAL BANK.
Macon's Million Dollar Bank."

835 Defendants introduced in evidence an advertisement appearing in the Macon Daily Telegraph on Sunday, August 2, 1914, occupying approximately a half page of the paper, opposite the advertisement above set forth:

"To Depositors and Customers Commercial National Bank:

We are pleased to announce that a merger has been perfected with the American National Bank and this institution. All the assets of the Commercial National have been transferred to the American National, the deposits in the Commercial National having been placed with the American National to the credit of our depositors, and the business of the Commercial National will hereafter be conducted at the offices of the American.

There will be no interruption of any kind in the business of our former customers. Their checks will be honored as usual at the American. This merger, in the opinion of the directors is a great achievement for the business interests of this section, making of the American National the largest bank in Middle Georgia, and placing Macon at the forefront, creating a bank with resources of sufficient amount to care for a great volume of business.

Arrangements have been made to protect the interests of the stockholders, a meeting of whom will be held on Aug. 12, to ratify the action of the directors.

836 The officers and directors of the Commercial take this opportunity of expressing their sincere appreciation of the patronage which has been accorded, and bespeak the kindliest consideration of the American. Depositors with the Commercial National should use checks of the Commercial National, as

heretofore, until they transfer their accounts to the American, or make other arrangements.

COMMERCIAL NATIONAL BANK,
Macon, Georgia."

Defendants introduced in evidence duplicates of the two advertisements above set out, as they appeared in the Macon News, on Monday, August 3, 1914.

837 Defendants introduced in evidence an abstract or memorandum of suits filed in the City Court of Macon, by the American National Bank for the collection of notes originally payable to the Commercial National Bank, as follows:

No. 7201. December Term 1914: date of filing 10/28/14. American National Bank v. George T. Wing, Jr. Note for $125.00 due August 11, 1914, alleged to be duly transferred to the American National Bank by the Commercial National Bank. Par. 3: "Your petitioner is the holder and owner of said note for value before maturity."

No. 7261. December Term, 1914, date of filing 11/17/14, American National Bank v. Ragland Brick Company, et al. Note for $4,000, due August 15, 1914, alleged to be payable to Commercial National Bank, and by said bank duly transferred to petitioner. Par. 3: "Your petitioner is the holder and owner of said note for value before maturity."

No. 7258. December term, 1914: date of filing 11/17/14. American National Bank v. W. P. Wheeler. Three notes for aggregate sum of $1,093.32. Notes of J. C. Wheeler, indorsed by W. P. Wheeler to Commer-

cial National Bank, and alleged to be by Commercial National Bank duly transferred to American National Bank. Par 3: "Petitioner is the holder and owner of said notes for the value before maturity."

838 No. 7257. December Term, 1914; date of filing 11/17/14. American National Bank v. E. H. Hyman and W. P. Wheeler. Note for $359.00, due July 5, 1914, alleged to be payable to Commercial National Bank and by said bank duly transferred to American National Bank, which is the holder and owner of same. Par 3: "Your petitioner is the holder and owner of said note before maturity."

No. 7256. December Term, 1914; date of filing 11/17/14. American National Bank v. W. P. Wheeler, Eight notes, aggregating the sum of $28,517.51, due August 1, 1914, alleged to be payable to Commercial National Bank, and by said bank duly transferred to American National Bank. Par. 3: "Petitioner is the holder and owner of said note for value before maturity."

No. 7228. December Term, 1914; date of filing 11/7-14. American National Bank v. J. A. Smith, Three notes aggregating the sum of $300.00, due August, September and October, 1914, payable to E. N. Jelks, by said E. N. Jelks duly transferred to Commercial National Bank, and by that bank transferred to the American National Bank. Par. 3: "Petitioner is the holder and owner of said notes for value before maturity."

No. 7262. December Term, 1914; date of filing 11/17/14. American National Bank v. Farish Brick Company. Five notes aggregating the sum of $15,996.99,

due October and November, 1914. Par. 4: "All of said notes are payable to the Commercial National Bank, and by said Commercial National Bank have been
839 duly transferred to petitioner, which is the holder and owner of same for value before maturity."

No. 7227. American National Bank v. Mrs. Hattie B. Hodges and J. O. Hodges. Date of filing 11/7/14. Note for $191.54, due September 3, 1914, payable to Commercial National Bank, and alleged to have been by said Commercial National Bank duly transferred to the American National Bank. Par 3: "Petitioner is the holder and owner of said notes for value before maturity."

No. 7225. December Term, 1914; date of filing 11/7/14. American National Bank v. J. A. Harper. Four notes aggregating the sum of $4,253.31, due June, August, July and October, 1914, payable to Commercial National Bank, and alleged to have been transferred to petitioner, who is holder and owner of same. Par. 3: "Petitioner is the holder and owner of said notes for value before maturity."

No. 7224. December Term, 1914; date of filing 11/7/14. American National Bank v. Herbert F. Haly. Two notes for $250.00 each, due October 15, 1914, payable to Young Mens' Christian Association, by it transferred to Commercial National Bank, and alleged to have been by Commercial National Bank duly transferred to petitioner, who is holder and owner of same. Par. 3: "Petitioner is the holder and owner of said notes for value before maturity."

840 No. 7222. December Term, 1914; date of filing, 11/7/14. American National Bank v. Georgia Pulp & Paper Mg. Co., et al, and H. E. Lowe Co., indorsers. Note for $218.17, due September, 1914; "Said note formerly held by the Commercial National Bank, but now held and owned by the American National Bank." Par. 3: "Petitioner is the holder and owner of said note for value before maturity."

No. 7219. December Term, 1914; date of filing 11/7/14. American National Bank v. E. L. Martin. Six notes, aggregating the sum of $6,504.91, payable to Commercial National Bank, and alleged to have been by said bank duly transferred to American National Bank. Par. 3: "Petitioner is the holder and owner of said notes for value before maturity."

No. 72..2. December Term, 1914. Date of filing 11/7/14. American National Bank v. E. L. Martin and E. W. Gould. Three notes aggregating the sum of $1,500, payable to E. W. Gould, by said E. W. Gould transerred to Commercial National Bank, and alleged to have been by said Commercial National Bank duly transferred to American National Bank, "which is now the holder and owner of same." Par. 3: "Petitioner is the holder and owner of said notes for value before maturity."

No. 7220. December Term, 1914; date of filing 11/7/14. American National Bank v. E. L. Martin and Emma T. Martin. Four notes aggregating the
841 sum of $6,712.00. Due July, August and September, 1914, payable to Commercial National Bank and "now held and owned by American National Bank." Par 3: "Petitioner is the holder and owner of said notes or value before maturity."

No. 7202. December Term, 1914; date of filing 10/28/14. American National Bank v. The Georgia Produce Co., et al. Note or $674.92, due September 25, 1914, payable to E. N. Lewis, Cashier, "said note being formerly owned by Commercial National Bank, but now held and owned by the American National Bank of Macon." Par. 3: "Your petitioner is the holder and owner of said note for value before maturity."

No. 7659. December Term, 1915. Date of filing 11/16/15. American National Bank v. Southland Knitting Mills. Four notes, aggregating the sum of $13,905.04, 3 of them dated March 4, 1914, and 1 dated March 10, 1914, all due six months after date. All payable to the Commercial National Bank, and alleged to have been by said bank transferred to American National Bank. Par. 3: "That your petitioner is the holder and owner of said notes for value before maturity."

842 Plaintiff introduced in evidence a notice appearing under the head of legal advertisements in the Macon Telegraph, running for 30 days after September 30th, 1914, the notice was reinserted as follows:

"The Commercial National Bank of Macon, Georgia, located at Macon, in the State of Georgia, is closing its affairs. All note holders and other creditors of the association are, therefore, hereby notified to present the notes and other claims for payment. E. N. Lewis, Cashier. Dated Macon, Ga., August 12, 1914."

843 Section 4.

Defendants introduced in evidence the financial statement of the resources of the American National Bank

on June 30th, 1914, showing that the total assets of the American National Bank on that date were $3,792,-488.79.

Defendant introduced in evidence a statement of the assets of the American National Bank as of July 31st, 1914, showing the assets to have been on that date $3,-936,687.29. This was introduced for the purpose of showing the total amount of resources on that date.

It was agreed and admitted that the form of resolution of liquidation was adopted at two meetings of the stockholders of the Commercial National Bank on August 12th, 1914, and September 30th, 1914, were on forms required by the Comptroller of the Currency for the liquidation of any national banking association.

844 Section 5.

Plaintiff introduced in evidence the notice of stockholders' meeting identified by the witness L. O. Benton as having been received by him in due course of mail. The letter being written on the letter-head of the Commercial National Bank, and being as follows:

"Macon, Ga., August 1, 1914.

To the stockholders of the Commercial National Bank of Macon, Georgia:

Notice is hereby given that a special meeting of the stockholders of the Commercial National Bank of Macon will be held at its Banking house in Macon, Georgia, at 10:00 A. M. on August 12, 1914, and that the matter proposed to be transacted at said meeting is the consolidation of the Bank with the American National Bank of Macon, Georgia, by the sale of its assets to said Bank, and

the assumption of its liabilties and taking over its business by said bank, including the liquidation of bank under sections 5220 and 5223 of the United States Revised Statutes.

By order of the Board of Directors.

E. N. LEWIS, Cashier."

845 Section 6.

Defendant introduced in evidence letter from J. F. Lewis to E. N. Lewis, dated August 18th, 1914, requesting the transfer of 150 shares of stock, identified by the reporter as "XXI." The letter is as follows:

August 18th, 1914. (Valdosta, Georgia).

Mr. E. N. Lewis, Macon, Ga.,

Dear Sir:

I am enclosing you 150 shares of the Commercial National Bank's stock. It seems that this stock has been standing in my name on the books of the bank and has never been transferred by you as it should have been done. Please have the stock transferred on the books of the bank to you, as of course in reality it is your stock and should have been in your name and transferred to me on the back as collateral to your note. Kindly attend to this promptly and oblige, because there may be an assessment of the stockholders of the Commercial National Bank and the Government might want to hold me on this stock.

Yours truly,

J. F. LEWIS.

Defendant introduces in evidence original letter from E. N. Lewis, cashier, to J. L. Lewis, dated August 19th, 1914, which purports to be in reply to the above letter

of August 18th. 1914, identified by the stenographer as 'XX2.' The letter is on the letter head of the Commercial National Bank, Macon, Ga., and is as follows:

Mr. J. F. Lewis,
Valdosta, Ga.
Dear Sir:

Replying to your valued favor of August 18th, inst., enclosing certificate for hundred and fifty shares of stock of the Commercial National Bank, with request that same be transferred from your name to
846 mine on the books of the bank.

I am advised that this transfer can not be made, as the stock was not presented for transfer until after the bank was placed in voluntary liquidation by the action of the stockholders. The Bank being in liquidation, its officers cannot transact any business for it or in its name except such as is incident to liquidation. I, therefore, return to you the certificate, as you doubtless wish to hold it as collateral to my note which you hold.

Regretting that I cannot comply with your request, I am,

Very truly yours,

E. N. LEWIS, Cash."

Defendant offered in evidence letter dated August 20th, 1914, signed E. N. Lewis, which was attached to the answer of E. N. Lewis just read of date the 19th, and which was identified by the reporter as 'XX2'; this letter which is now offered and which was attached to that is marked by the reporter 'No. 4' and it came in the same mail and attached to the letter just offered. The letter is as follows:

Macon, Ga., August 20th, 1914.

Dear Uncle Johnnie:

Having been instructed to make no transfers of stock, I was forced to hand your letter to Mr. Park for instructions, and he dictated the enclosed reply with instructions to me to forward to you. This is in explanation of that.

Respectfully,

NAT.

Defendant offered in evidence draft dated August 31, 1912; drawn by E. N. Lewis on J. F. Lewis, care the Citizens Bank of Valdosta; payable to the order of the Commercial National Bank, for eighteen thousand dollars; also offered with it the indorsements on the back: 'Paid $450.00 January 2nd, 1913, dividend check'; 'Paid $450.00 July 2nd, 1913, dividend check'; 'Paid $450.00 January 2nd, 1914, dividend check.'

Defendant offered in evidence note identified by Mr. Lewis dated January 1st, 1914, due January 1st, 1915, after date, payable to John F. Lewis or order, for the sum of $18,450.00, signed E. N. Lewis. Said
847 note having a credit of $450.00 under date of 7/2/14.

Defendant introduced in evidence certificate of stock for 150 shares of capital stock of the Comemrcial Nat'l Bank, dated Oct. 10th, 1912, with all entries thereon, same being certificate No. 382.

Defendant offers in evidence letter from E. N. Lewis to Mr. John F. Lewis, his uncle, dated March 9th, 1915. The letter is in part as follows:

"Macon, Ga., April 9, 1915.

Dear Uncle Johnnie:

Your letter of the 7th has reached me only this morning and I hasten to reply.

The news which your letter brings, to the effect that the opinion prevails that the stockholders of the Commercial will be assessed is a great disappointment to me. I certainly hope that this will not be done.

The inquiries which you make of me are, I suppose, questions of law rather than fact, and, I suppose further, will be the subject of considerable litigation if the stockholders are held for an assessment. As to the 150 shares of my stock standing in your name, you know what the facts are in reference to this and you know also that there will be no effort on my part to evade the fact that whatever liability attaches to this stock is mine and not yours. As to whom the American will look I cannot say, but it seems to me that they and all the officers of the Commercial were on sufficient notice of the sale of this stock to make the sale a virtual transfer of record."

Subject to objection that the letter is not admissible, plaintiff offers with the letter this paragraph:

"You are entirely mistaken in the idea that I am familiar with the present status of the bank's affairs. The committee have never cared to have any of my assistance and I have not as you know been at all in touch with it. The American have at times called on me for information with reference to certain particular matters, such as to what my testimony would be concerning notes that were in suit. Never at any time have I been consulted or informed by anybody concerning the policy or progress of liquidation. I do not know at

all what the present conditions of affairs is. I am too poor a stenographer and you have not the time to read what I think about every loan in the bank, but I am sure that there are not enough losses to necessitate an assessment. A close analysis of these things may be desirable to you and to all interested. If you would like for me to go into them with you I will be glad to come to Valdosta and talk them over with you. I think that I could easily do this on my next trip to Leesburg, reaching Valdosta early in the morning and leaving on the Coast Line."

Plaintiff offers in evidence in this connection the page on the Commercial National Bank stock ledger, which has been identified by R. C. Souder. The pages do not seem to be numbered, but the page headed 'John F. Lewis, Valdosta, Georgia,' was the one offered, and particularly the last entry. The last line on that page, under the word month, is the figures 10—it is the date, and after the month is the figure 10, after day is the figure 10 and after year, is the figure 12; shares, after that is filled in 150, that is number of shares issued, 150; No. (of certificate) 382; balance (which represents total number of shares) 200. The stock certificate which has been introduced bears the same date as these figures, the date is the same, the same certificate number and for the same number of shares.

848

Plaintiff then offered in evidence in this connection the minutes of the meeting of stockholders of the Commercial National Bank, of date of August 20th, 1912, at which the resolution was passed providing that under the Act of May 1, 1886, the capital stock of that association (the Commercial National Bank) be increased

one hundred thousand dollars, making the total capital stock of the bank three hundred thousand dollars, and providing how the issue should be applied, and also providing that as far as possible the stockholders be allowed until September the 1st to purchase their pro rata share of the increased stock—the whole minutes were offered.

849 Section 6.

Plaintiff introduced in evidence abstract to certain deeds made by the Commercial National Bank, the abstract being as follows:

"Warranty deed, dated July 3, 1914, filed for record Aug. 3, 1914, at 8:50 A. M., recorded in Book 194, folio 503, from the Commercial National Bank of Macon, by E. Y. Mallary, president, E. N. Lewis, Cashier, under seal of bank, to the American National Bank of Macon. Consideration $75,000.00. Conveying the lot in the Triangular Block, Macon, Georgia, on which is situated the Commercial Bank Building, together with the bank fixtures and all other fixtures, appliances and improvements contained in said building.

"Warranty deed, dated July 10, 1916, filed for record October 26, 1916, recorded in Book 204, folio 105, signed Commercial National Bank of Macon, by E. Y. Mallary, president, attest E. N. Lewis, cashier, with seal of bank attached, to American National Bank of Macon. Consideration $40,000.00. Conveying lot in Triangular Block on which is situated the Commercial National Bank building, together with the fixtures, appliances and improvements contained in said building.

"Warranty deed, dated March 11, 1915, filed for record August 10, 1915, recorded in Book 209, folio 456, signed W. E. Small, to Commercial National Bank, a corporation in Bibb County, Georgia. Consideration $12,500.00. Conveys part of lot one (1), Block five (5), Northwest Common, fronting College street seventy (70) feet, and extending back even width two hundred (200) feet.

"Warranty deed, dated July 10, 1916, filed for record October 26, 1916, recorded Book 204, folio 104, signed Commercial National Bank of Macon by E. Y. Mallary, president, attest E. N. Lewis, Cashier, seal of bank attached, to American National Bank of Macon. Consideration $10,000.00. Conveys property described in deed from W. E. Small to Commercial National Bank, which deed is referred to therein."

Plaintiff introduced in evidence the reports of the liquidating agent of the American National Bank for the quarter ending December 31st, 1914, for the quarter ending March 31st, 1915, for the quarter ending June 30th, 1915, for the quarter ending September 30th, 1915. for the quarter ending December 31, 1915, for the quarter ending March 31st, 1916, for the quarter ending June 30th, 1916, for the quarter ending September
850 30th, 1916, for the quarter ending December 31st, 1916, and for the quarter ending March 31st, 1917.

Plaintiff introduced in evidence the contract between the Commercial National Bank and the Central Trust Company, and the contract between T. C. Parker and the Commercial National Bank, et al., which contract was ratified by the directors of the Commercial National

Bank in their minutes of November 10th, 1914, and which is as follows:

* * * * * * * * * * *

851 Plaintiff introduced in evidence a contract dated October 24th, 1914, between the Commercial National Bank, T. C. Parker, the Central Trust Company, and the Continental Trust Company, about which the witness Leon S. Dure testified, and which was approved by formal resolution of the Board of Directors at their meeting of November 10, 1914.

852 Plaintiff introduced in evidence contract of August 31st, 1914, between T. C. Parker, The Commercial National Bank of Macon, and the American National Bank, as liquidating agent of the Commercial, the Fourth National Bank, the Central Trust Company, the Savings Bank, and Continental Trust Company, and George S. Jones, Trustee. This contract was also identified by the witness, Leon S. Dure and appears to have been ratified by the Directors of the Commercial National Bank by resolution adopted at a meeting held November 10th, 1914.

853 Plaintiff introduced in evidence resolution of the liquidating Committee of the Commercial National Bank with reference to the public sale of the Commercial National Bank Building, and the W. E. Small property, which was identified by the witness Leon S. Dure. The resolution being as follows:

The following resolution was offered by Mr. O. A. Park, and was unanimously adopted:

"Resolved that the American National Bank do, and it is hereby requested, to proceed to offer for sale at public outcry to the highest bidder for cash, before the Court House door in Macon, Bibb County, Georgia, on the first Tuesday in June, 1916, after advertising the same conspicuously in both the Macon Telegraph and the Macon Evening News, the building and lot formerly occupied by the Commercial National Bank, and, in the event a satisfactory bid is received therefor, to sell and convey the same to the purchaser upon payment of the purchase price; the right being reserved to withdraw the property from sale before knocking it off in the event a satisfactory bid shall not be received.

Resolved further, that said The American National Bank, be instructed to withdraw said property from sale before knocking off the same, in the event a bid of forty thousand dollars, or better, is not obtained.

The following resolution was offered by Mr. O. A. Park, and unanimously adopted:

"Resolved that the American National Bank be, and it is hereby requested, in order to perfect the title thereto, to offer for sale at public outcry to the highest bidder for cash, before the Court House door in Bibb County, Georgia, on the first Tuesday in June, 1916, after advertising such sale once a week for four weeks in the Macon Telegraph, the property conveyed to the Commercial National Bank, by W. E. Small, the American National Bank being expressly authorized to bid and purchase at said sale, provided its bid shall amount to ten thousand dollars, or more.

"The undersigned, although not present at the meeting held on May 1, 1916, expressly assent to and concur in the foregoing resolution."

Plaintiff introduced in evidence the advertisement of the sale of the W. E. Small property on College Street, which was identified by Leon S. Dure. The advertisement being as follows:

"Sale of College Street Home.

Will be sold before the Court House door in Macon, Bibb County, Georgia, on the first Tuesday in June, 1916, between the legal hours of sale, to the highest and best bidder for cash, the following described real estate, to-wit:

854 "'All that tract of land in the City of Macon, Bibb County, Georgia, being part of lots one (1), Block five (5), of Northwest Commons in said City, said tract fronting on College Street seventy (70) feet, and extending back even width two hundred (200) feet, commencing at corner of the alley extending from College Street to Madison Street, between blocks four (4) and five (5), and extending thence along College Street in a Northerly direction seventy (70) feet, and back at right angles from College Street and along said alley with even width a depth of two hundred (200) feet, to alley in the rear.

"The right is reserved to withdraw said property from sale if a satisfactory bid is not received, and the American National Bank is expressly authorized to bid and purchase at said sale. Fee-simple titles will be made to the purchaser by the undersigned.

"This May ...., 1916.

COMMERCIAL NATIONAL BANK OF MACON, GA.,
AMERICAN NATIONAL BANK OF MACON, GA.,
COMMERCIAL NATIONAL BANK OF MACON, GA.,
By Its Liquidating Agent,
AMERICAN NATIONAL BANK OF MACON, GA."

Plaintiff introduced in evidence the advertisement of the sale of the Commercial National Bank Building. The advertisement beings as follows:

"Sale of Commercial National Bank Building.

Will be sold before the Court House door in Macon, Bibb County, on the first Tuesday in June, 1916, between the legal hours of sale, to the highest bidder for cash, the following described real estate, to-wit:

"All that tract or parcel of land, lying and being in the City of Macon, County of Bibb, and State of Georgia, and known in the plan of said City as a part of Lot one (1) Square Twenty-one (21), and more particularly described as follows: Commencing at a point on Second Street where said Second Street intersects the southwestern line of a twenty (20) foot alley running through block twenty-one (21) from Second Street to Third Street, and from said starting point running thence along Second Street in a Southwesterly direction thirty-three (33) feet; thence at right angles in a Northwesterly direction and parallel to the line of the alley above mentioned and Cotton Avenue; thence in

an Easterly direction along Cotton Avenue to the line of the alley above mentioned; thence in a Southeasterly direction along the line of said alley to the point of beginning, and being the lot situated on what is known as Triangular Block, in the City of Macon, together with the building thereon, and all bank fixtures, and other fixtures, appliances and improvements contained in said building, and which said building is at present known as the 'Commercial Bank Building.'

"The right is reserved to withdraw said property from sale if a satisfactory bid is not received. Fee-simple titles will be made to the purchaser by the undersigned.

"This May 5, 1916.

"COMMERCIAL NATIONAL BANK OF MACON, GA.,
AMERICAN NATIONAL BANK OF MACON, GA.,
COMMERCIAL NATIONAL BANK OF MACON, GA.,
By Its Liquidating Agent,
AMERICAN NATIONAL BANK OF MACON, GA."

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Plaintiff introduced in evidence a letter from A. W. Lane, dated October 23, 1915, to O. A. Park, Esq.; the letter being as follows, identified by Mr. Dure:

"Macon, Ga., October 23, 1915.

Mr. Orville A. Park,
Macon, Ga.

Dear Orville:

I am pleased to hand you herewith my check on the Fourth National Bank, Macon, payable to the order of the Commercial National Bank, for $1,500.00. This is

in accordance with our conversation of even date, and, by way of further explanation, wish to say that this sum was realized in the matter of the intervention of the Commercial National Bank vs. Beach Manufacturing Company, the last named corporation having been in bankruptcy and subsequently in the hands of a receiver in the United States Court.

I collected on Receiver's Certificates for the principal sum of Three Thousand Dollars ($3,000) a total sum of Three Thousand Five Hundred Eighty-four Dollars and twenty-one cents ($3584.21)—the sum of $584.21 being the interest on said principal amount. From said sum I deducted $84.21 to cover expenses incurred by me during the past two years in various features of this litigation, the items of which it is deemed unnecessary to enumerate.

My fee for this case was the sum of Five Hundred Dollars ($500.00). Under agreement with you as representing the American National Bank, I have deducted the sum of Fifteen Hundred Dollars ($1500.00) on account of fee for services rendered to the Commercial National Bank, and which said sum is accepted by me in full of my fee to date, so far as assets in the hands of the American National Bank at the present time are concerned. This, of course, would not settle any claim that I may have for fees against the Commercial National Bank, nor is it intended to include the pending receivership case in the United States Court in the event any funds should be brought into the hands of the Court as the result of this litigation, and as to which I would be entitled to a fee as attorney of the Commercial National Bank.

This, I believe, fully explains the distribu-
856 tion of the fund above mentioned, and in all respects confirms our conversation of even date.

Thanking you for your kind services in this matter, I beg to remain,

Yours sincerely,

A. W. LANE."

Plaintiff introduced in evidence minutes of various meetings to the special stockholders committee of the Commercial National Bank as follows, identified by Mr. Dure:

"Macon, Ga., November 11, 1914.

The Committee met this day, there being present Messrs. Hillyer, Benton, Anderson, Park and Dure. After some discussion regarding the fidelity bond of Mr. Lewis, Cashier, on motion of Mr. Anderson, the bond was delivered to Mr. Park to give such notice to the Company as he considered proper in the premises.

After a general discussion of various affairs of the bank, the meeting adjourned."

"Macon, Ga., October 17, 1914.

A meeting of the Joint Committees was held this day at the office of the American National Bank, there being present, Messrs. L. P. Hillyer, Anderson, and Mr. Dure. A letter from Mr. E. P. Mallary submitting a proposition for F. L. Mallary, in regard to the surrender of certain stocks of his in respectively the Mallary & Taylor Iron Works, and the Mallary Mill Supply Company, was read, and after discussion, a motion was made that Mr. Park confer with Mr. E. P. Mallary, and insist upon a transfer of all these stocks held by the various banks, and that the Committee be permitted to make an examination of the statement of business of

both companies, after which they would take up the question of accepting these stocks at a price then to be agreed upon. This motion was unanimously carried. The meeting then adjourned.

"Macon, Ga., November 13, 1914.

Meeting of the Joint Committees held this day at the office of the Continental Trust Company. There being present, Messrs. L. P. Hillyer, Anderson, and Dure. Mr. Hansell Hillyer made a report regarding the indebtedness of S. N. Smith, and also Mrs. S. B. Smith, stating that he was informed that the note of Mrs. Smith was secured by mortgage on real estate, the mortgage being in the possession of Mr. E. N. Lewis, also reporting that the paper of Mr. S. B. Smith was unsecured, but that he had 65 bales of cotton stored in warehouse. After consideration, it was agreed that the note of S. E. Smith be held for ninety days if secured by cotton, or cotton purchased on a basis of eight cents per pound. Motion was made by Mr. Dure, and passed, that Mr. Park be instructed to request E. N. Lewis, J. J. Cobb, and E. Y. Mallary to deliver to the bank all collateral of any character made to the bank.

Mr. Dure reported that he had conferred with Mr. T. B. West regarding the indebtedness of the Security Loan & Abstract Company, and that he had requested Mr. West to furnish the Committee his statement regarding each of the notes held by the bank, which Mr. West stated he would do.

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After a general discussion of the bank's affairs the meeting adjourned."

"Macon, Ga., October 28, 1914.

The regular weekly meeting of the Joint Committees was held this day at the office of the Continental Trust Company, there being present Mr. L. P. Hillyer, Mr. Park, Mr. Anderson and Mr. Dure; Mr. Hansell Hillyer also meeting with the committees.

The following matters were given attention:

Note of R. L. Berner, $300, to be held until Nov. 22 at which time his other note matures.

Place in hands of attorney note of Ardell Armstrong.

To accept monthly drafts drawn on J. Waxelbaum for payment of indebtedness of D. Waxelbaum.

Indebtedness of Mr. A. McCay, it was agreed to request statement of his business, and agreed to hold his papers provided an extension of time was granted by his other creditors, and we are paid proportionately along with other creditors from time to time.

The matter of the indebtedness of the Capitol Savings Bank, which is secured only by a secondary lien on 222 shares of Central Trust Company, same being held by the Central Trust Company to secure certain discounts made for the Capitol Savings Bank, maturing from one to five years, was fully discussed, and it was deemed advisable to effect some settlement with the Central Trust Company whereby the Commercial National Bank would have some direct collateral immediately, and a proposition along this line was submitted by the Central Trust Company, which was viewed with favor by the Committees, and the matter referred to Mr. Hansell Hillyer to take up with Mr. Wilson, of the Central Trust Company, and the Capitol Savings Bank, with a view of consummating same.

Mr. Anderson made a motion that a committee be appointed to confer with Mr. E. Y. Mallary, and request that he deliver to us any securities held by him for the account of anyone's indebtedness due the bank, also that said committee be permitted to examine the books and affairs of the Eagle River Mining Company, which motion was duly carried, and the Chairman appointed Mr. Anderson and Mr. Dure as the committee.

Mr. Hansell Hillyer was requested to investigate the value of certain Monarch Mining Company stock held as collateral on indebtedness of George Collier."

"October 21——

The indebtedness of the Capitol Savings Bank was discussed, Messrs. Anderson, Dure and Hillyer having reported that they had made an examination of the institution, the Commercial National Bank having as collateral certain stock in the Central Trust Company, which is held to first secure the Central Trust Company on certain paper; Mr. Lee moved that Hr. Hansell Hillyer be requested to take up with the Central Trust Company the matter of endeavoring to make some settlement with them, and report at the next meeting.

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The indebtedness of the Southland Knitting Mills, which is in dispute, was fully gone into, and action in this matter was deferred until statements could be secured from Mr. J. J. Cobb and Mr. E. N. Lewis.

The indebtedness of Mr. F. L. Mallary and his companies was discussed, and Mr. Park was requested to insist that the stocks of, respectively, the Mallary & Taylor Iron Works and the Mallary Mill Supply Company, held by the Banks be transferred and new certificates issued in the name of the bank, and that was an audit of the affairs of these two Companies be made,

and further action to be taken as soon as this is done.

The indebtedness of J. L. Jessup and the Jessup Trust Company was fully discussed, and Mr. Hansell Hillyer and Mr. Dure were appointed as a committee to make an examination of the Jessup Trust Company and to also have Mr. Jessup to instruct the Empire Life Insurance Company to pay over to the Bank all moneys to be due him on his contract with them, which contract is held as collateral on the indebtedness of J. L. Jessup.

Mr. Joel A. Smith requested that his note of $1,300 be held for a short while, offering to give a mortgage on property in Dublin, Ga., to secure same, which was agreed to by the committee.

Mr. W. E. Small's indebtedness was discussed, and it was decided to request Mr. Small to attend our next meeting.

The indebtedness, respectively, of the Anderson Printing Company, E. W. Burke and the J. W. Burke Company was taken up, after which the matter was referred to Mr. W. T. Anderson to see the parties, and report at our next meeting.

A letter from Mr. Eugene Anderson regarding his indebtedness was read, in which he agreed to make certain monthly payments, which the committee agreed to, so long as the payments were regularly met as provided in his letter.

Mr. Jas. Platt requested to be allowed to pay $10 per month on his indebtedness of $224.40, which was agreed to by the committee.

Mr. W. D. Drew requested that his paper of $1052.50 be held for thirty days, he agreeing to give additional security, to which the committee agreed.

The meeting then adjourned."

"Macon, Ga., Dec. 2nd, 1914.

A meeting of the joint committees was held in the office of O. A. Park, Esq., there being present,
859 Messrs. Hillyer, Anderson, Park, Nebton (Benton?) and Dure, Mr. Dure acting as secretary in the absence of Mr. McKay.

The minutes of all previous meetings up to and including the minutes of Nov. 18th, 1914, were read, and upon motion approved.

Mr. Dure presented a financial statement of the F. A. Guttenberger Company, whose indebtedness to the Bank is now $1,980.00, they having made payments to the amounts of $1,200 on same, and this balance being secured by about $4,000 in collateral notes. This Company requested an extension of not more than twelve months, agreeing to reduce same $200 each month, and this was agreed to by the committee.

Approval was given to the sale of lot on Forsyth Street, known as 604 Forsyth Street, and fronting on Forsyth Street fifty feet, and running back on Boundary Street one hundred and thirty-eight feet, and on the Western edge next to residence lot of S. C. Moore one hundred and forty-three feet, at a price of $4,500.00, and being one of the two houses held by the bank by Second Mortgage given by Mr. S. C. Moore, the proceeds of said sale to be paid to the Bank less the amount to be paid the Life Insurance Company of Virginia, holders of the first mortgage, and the officers of the Commercial National Bank were requested and authorized to execute the power quit-claim deed to said property sold.

It was agreed to offer the Rice farm of forty-four acres on Forsyth Road at a price of $4,250.00.

The matter of the bond of E. N. Lewis was fully discussed, and upon motion of Mr. Anderson, Mr. Park

was directed to take such action as he thought proper at a retainer's fee of $250 and 10% of any amount collected, and that the American National Bank be requested to pay said fee; all of the committee voting 'yes' on this motion with the exception of Mr. Benton, who voted 'no.'

The Security Loan & Abstract Company made the following proposition:

In order to make a settlement of their indebtedness to the Commercial National Bank and the Commercial & Savings Bank, they will upon the consent of the joint Committees from the Commercial National Bank and the American National Bank of Macon, make the same as follows:

The Security Loan and Abstract Company will execute one note for .....$3,025.00
one note for .....$3,025.00
one note for .....$4,067.88

Making a total of .....$10,117.88

One of these notes for $3,025.00 to be indorsed by T. B. West.

The Security Loan & Abstract Co. will execute one note for .....$1,151.62
860 note for ..... 730.50

making a total of .....$1,882.12

All of the above notes (payable the first three described to the American National Bank of Macon, and the last two described papers to Continental Trust Company)

to draw interest from date at the rate of seven (7%) per cent. per annum.

The total amount of notes given to both the American National Bank of Macon and to the Continental Trust Company by the Security Loan & Abstract Company, amounting to $12,000.00.

Mr. J. J. Cobb is to give a note in favor of the American National Bank of Macon for $6,000.00, the same to be secured by 100 shares of Central Trust Company's stock.

Mr. J. J. Cobb is to give a note in favor Commercial National Bank for $8,402.62—the same to be secured by 15 shares of Eagle River Mining Company stock, 100 shares of the Security Loan & Abstract Company stock, and coupons of the Eagle River Mining Company amounting to $525.00.

Mr. J. J. Cobb is to give a note in favor of the Commercial & Savings Bank for $1,552.77, secured by 22 shares of Georgia Kaolin Company stock.

Upon motion of Mr. Anderson seconded by Mr. Benton the above settlement was agreed upon by the committee, after a careful consideration of every question pertaining to the indebtedness of the said Security Loan & Abstract Company.

After a general discussion of various matters of the Bank, the meeting adjourned.'

"Macon, Ga., Dec. 18th, 1914.

Meeting of the joint committee was held this day in the office of the Continental Trust Company, there being present Messrs. Hillyer, Benton, Park and Dure.

Mr. Dure reported that Mr. Benton and Mr. Anderson with himself had fully considered the proposition of W. E. Small, in which Mr. Small offered to convey

to the Bank his residence on College Street, to be accepted at a valuation of $12,500.00, and pay in cash the balance of his indebtedness to the Bank. Mr. Dure stated that the property had been inspected by Messrs. Anderson, Benton, and himself, and after conferring with Mr. Taylor, of the American National Bank, and a full consideration of the matter being given, he decided to accept the proposition, the property to be conveyed subject to approval of titles.

The following notes were given instructions to be placed with Hardeman, Jones, Park & Johnston:

Note of J. R. Whipple,
Note of B. L. Thames.
861 Note of Mrs. Walter H. Wiggs,
Note of C. M. Wiley,
Note of R. L. Permenter, indorsed by J. M. Dunwody. The other notes of Permenter to be held pending a settlement.

It was agreed to hold for the present the note of the Y. M. C. A. and direction was given to hold the note of J. L. White, provided he gave security and reduced same monthly.

After a general discussion of various matters of the Bank, the meeting adjourned."

"Macon, Ga., Dec. 16th, 1914.

Meeting of the Joint Committee was held this day at the office of O. A. Park, Esq., there being present Messrs. Hillyer, Anderson, Park and Dure.

Mr. E. L. Martin had before the Committee the matter of the indebtedness of himself and that of Mrs.

Martin, and after a full discussion of the matter the following motion was offered by Mr. Anderson and carried:

'That the Commercial National Bank Committee has no authority to submit any proposition in the matter, as the notes of both Mr. and Mrs. Martin having been passed to the American National Bank and suit having already been filed on same.'

Mr. Dure made a motion that the J. W. Burke Company be notified that their papers cannot be longer carried unless satisfactorily arranged, they having failed to meet the monthly payments as previously agreed upon, also that Mr. E. W. Burke be requested to furnish the Bank with a life insurance policy of $5,000 as agreed. This motion prevailed.

It was agreed that the notes of Mr. Ardell Armstrong be placed with Attorney unless paid by Dec. 20th.

Mr. Hansell Hillyer was requested to secure the indorsement without recourse of the Security Loan & Abstract Company on the notes of Mr. B. G. Artope, the papers having been made in their name as an accommodation.

Mr. Hansell Hillyer was also requested to secure from Mr. F. T. Vincent security deed on certain property to cover his indebtedness, and it was agreed that an extention of four months be granted Mr. Vincent.

Mr. Albert McKay was granted an extension on his indebtedness on condition that he make monthly reductions on same and no preference created in favor of his creditors.

It was decided to defer action on the note of Mr. J. J. McKay until the next meeting.

After a general discussion of various matters of the Bank the meeting adjourned."

"Macon, Ga., Nov. 27th, 1914.

862 Meeting of Joint Committee held this day, there being present Messrs. Hillyer, Park, Anderson and Dure.

The indebtedness of Mrs. A. P. Rice of $5,750.29, which was settled by accepting deed to 44 acres of land subject to an encumbrance of $2,500, was approved, as Mrs. Rice possessed no other assets, and this settlement saves any expense of suit in the matter.

Approval was given to the sale for $4,500 of a certain house and lot on Forsyth Street, Vineville, which was held under second mortgage by the Bank against Mr. S. C. Moore, the proceeds of same less the first mortgage encumbrance to be paid to the Bank.

Mr. Dure reported that he had several conferences with Mr. T. B. West in connection with the indebtedness of the Security Loan & Abstract Company, and would report fully in the matter at an early date.

Mr. Park reported regarding correspondence he had had relative to the claim on bond of E. N. Lewis, stating that to further sum the matter it would necessarily involve an expense of Attorney's fees, stating his firm would be agreeable to accepting a fee of $250 and 10% on the amount realized on the bond, or a fixed fee of $500, also stating that he was inclined to believe that recovery on the bond was doubtful.

Mr. Dure and Mr. Anderson both thought the effort should be made to realize on the bond, and Mr. Hillyer stated that the American National Bank was unwilling to make any advance for the expenses in the matter, and, therefore, no definite conclusion was reached in the matter beyond the fact that Mr. Hansell Hillyer was requested to furnish to the Bonding Company as full

information as possible, upon which a claim for collection of the bond was expected.

The meeting adjourned."

863 Defendants offered in evidence part of minutes of August 7th, 1914, of the meeting of the Directors of the American National Bank as follows:

"On motion it was resolved that president R. J. Taylor be authorized to appoint a committee of three as an advisory committee to assist him in looking after the affairs of the Commercial National Bank of Macon, which bank was absorbed by the American National Bank of Macon. The president appointed on this committee Messrs. Park, Lee and Hillyer."

Defendants offered in evidence part of the minutes of the Board of Directors of the American National Bank of October 14th, 1914, as follows:

"Whereas in liquidating the affairs of the Commercial National Bank additional duties and responsibilities have fallen upon president R. P. Taylor, and whereas it is the opinion of this board that owing to the condition of the affairs of the Commercial National Bank. president Taylor has been instrumental in averting—not only possibly heavy losses to the American National Bank, but has also rendered valuable services to the community; and, whereas, it is the desire of this board to compensate President Taylor in a degree for the services he has rendered, not only to the institution, but to the community as well: Therefore, be it resolved, that R. J. Taylor, be paid the sum of $1,200. The cashier is hereby authorized and directed to pay this sum over to Mr. Taylor."

Defendants offered in evidence the minutes of the Board of Directors of the American National Bank of November 10th, 1914, as follows:

"On motion the officers of the American National Bank were authorized to pay to W. T. Anderson and Leon S. Dure the amounts claimed by them as being due them by the Commercial National Bank for services rendered, provided the said amount so paid be credited on a certain paper held by the Commercial National Bank, upon which W. T. Anderson and Leon S. Dure are liable either as makers or indorsers."

It is agreed and admitted that the form of resolution of liquidation, which was adopted at the two meetings of the stockholders of the Commercial Nat'l Bank, on August 12th, and Sept. 30th, 1914, respectively were on forms required by the Comptroller of the Currency for the liquidation of any National Banking Ass'n.

864 Plaintiff offers in evidence petition filed November 3rd, 1914, in this Court, and the answer in the case of Albert Lamar Patterson and J. W. Payne, as stockholders against the Commercial National Bank, its directors and members of its stockholders' committee, and also of the special committee of stockholders, praying for the appointment of receiver. Following are quotations from the answer:

"These respondents admit that the assets of said Bank (Commercial National Bank) were turned over to the American National Bank as stated in said paragraph, but deny that the Commercial National Bank guaranteed that the total amount collected from said assets would be sufficient to reimburse said American National Bank as stated in said paragraph.

"By way of fully answering the allegations of said paragraph, and for a full, definite and accurate explanation of said allegations as stated by complainants, these respondents say that when it was made known to the Board of Directors of the Commercial National Bank by the officers and Finance Committee thereof, that the bank was carrying a good many loans, amounting in the aggregate to a considerable sum of money, and some of which were secured by assets that were not of a liquid character and could not be readily converted into money, and that the bank would be in need of money to meet the demands and obligations of its current business, it became imperative that an arrangement be made to protect the depositors and creditors of said bank and also the stockholders thereof, and which could only be done by securing a reasonable time in which to convert the assets into money without sacrifice of the same to the loss of all parties at interest.

"The officers of the bank had wisely gone into the affairs of the Commercial National Bank with the officers of the American National Bank, and it was determined that the wisest and safest method to pursue was to liquidate the affairs of the bank through the American National Bank, as provided by Sections 5220 et seq., of the Revised Statutes of the United States.

"To carry out this purpose, a called meeting of the directors of said bank was held on August 1st, at which a resolution was passed by the Board of Directors to go into voluntary liquidation as provided by the statutes of the United States, and the officers of said bank were authorized to transfer to the American National Bank all the assets of the Commercial National Bank, and the same were so transferred and assigned; the American National Bank assuming all liability to depositors and creditors and agreeing to account to the shareholders of

the Commercial National Bank for all overplus remaining after so doing. (Copy of the resolution is attached and made part of the answer).

"These respondents further aver that a meeting of the stockholders was called for August 12, 1914, under a notice sent out August 1st. The said stockholders of
865 the Commercial National Bank, in answer to said notice, convened on the 12th day of August, there being present in person and by proxy more than 2600 shares out of the total of 3000 shares.

"The stockholders of said bank in their meeting on August 12th, after considering the situation with reference to the affairs of said bank, unanimously passed a resolution ratifying and approving the action of the Board of Directors on August 1st, in transferring and assigning the assets of the Commercial National Bank to the American National Bank, and providing for the voluntary liquidation of said association; and also passed unanimously a resolution ratifying and approving the contract made and entered into between the Commercial National Bank and the American National Bank, dated August 11, 1914. (Copies of the resolution and of the contract are attached and made part of the answer.

"By the terms of said contract and agreement, the American National Bank assumed the payment of all depositors and creditors and took over all the assets of said bank, as fully set out in said contract, agreeing to account to the shareholders for any surplus that remained after discharging all the liabilities to depositors and creditors of said Commercial National Bank. The said American National Bank, under the terms of said agreement, received no fee for its services, and no charges are to be made against the Commercial National

Bank in liquidation of its affairs, except actual expenses.

"These respondents further say that the American National Bank is the largest financial institution in this section of the state, and in every way is well equipped for the duties and responsibilities of acting as the liquidating agent of the Commercial National Bank; and in this way, in the opinion of these respondents, the affairs of the bank can be administered with greater economy than in any other manner, and to the best interest of depositors, creditors, and stockholders.

"Further answering, these respondents say that the stockholders, at their meeting on August 12th, unanimously passed the resolution sent out in printed form by the Comptroller of the Currency, providing for the voluntary liquidation of the bank as authorized by the statutes of the United States. (Copy of the resolution is attached and made a part of the answer). * * *

"These respondents say that it is true that W. T. Anderson, L. S. Dure, J. J. McKay, John F. Lewis, and L. O. Benton were appointed a committee to represent the stockholders and for the purpose of advising with the American National Bank and with the directors of the Commercial National Bank, in converting the assets of said Commercial National Bank into money, and for the purpose of advising in the management of the affairs of the said bank, so as to insure the best possible results and to protect in every possible way the interest of all parties concerned. * * *

"While the stockholders present, in person and by proxy, are bound by the action of said meeting of the stockholders, held August 12th, and would be estopped from complaining in a Court of Equity that the
866 assets of the Commercial National Bank had been transferred to the American National

Bank as liquidating agent, it became necessary, nevertheless, under the advice of the Comptroller of the Currency, that another meeting be held, after thirty days' notice as required by the Articles of Association, in order that all stockholders, whether present or absent, would be bound by the action of the stockholders, provided that at least two-thirds thereof ratified the action of the Board of Directors and the contract made with the American National Bank hereinbefore referred to. * * *

"Respondents, for want of sufficient information, are unable to admit or deny whether or not the assets turned over to the American National Bank will be sufficient to pay off the amount advanced to depositors and creditors of said bank. Manifestly, it is impossible at this time to know how much will be collected out of the assets by said American National Bank. * * * The assets turned over to the said American National Bank exceeded, in round numbers, the liability of said bank to depositors and creditors in the sum of about $400,000.00. * * *

"If any assessment should be made against the stockholders, these respondents say that they are advised that no receiver is needed, as a matter of law, to collect an assessment upon the stockholders in said Commercial Bank; but wherever a legal right exists as to such assessment, the liability may be enforced at the instance of any creditor in a suit instituted for said purpose in the manner made and provided by law in such cases. * *

"The depositors and creditors have been fully protected without loss or inconvenience, and the method of liquidation provided by the Statutes of the United States, in the opinion of these respondents, was the safest and least expensive method that could have been adopted for winding up the affairs of the bank. * * *

"The American National Bank is in possession of the physical assets of the Commercial National Bank, and should be permitted to collect and apply the proceeds of same in accordance with the terms and provisions of said contract hereinbefore referred to."

867 "Georgia, Bibb County.

In person appeared John J. McKay, who, on oath says, that he attended the meeting of shareholders of the Commercial National Bank of Macon, held at Macon, Georgia, on September 30th, 1914 and that he was elected and acted as secretary of said shareholders' meeting.

He further says that the total number of shares of stock represented at said meeting, in person and by proxy, was twenty-six hundred and eighty-four shares, and that a correct list of the shareholders present is included in the minutes of said meeting, and that a certified copy has been furnished to the Comptroller of the Currency.

Affiant further says that on the resolution providing for the voluntary liquidation of the Association under Sections 5220 and 5221 of the United States Revised Statutes, all of the shareholders present, either in person or by proxy, voted in favor of said resolution, except six hundred and thirteen shares, being as follows:

| | (Proxy) | |
|---|---|---|
| Dr. N. Z. Anderson | | 40 shares |
| L. O. Benton | | 10 shares |
| L. O. Benton & Brother | L. O. Benton | 45 shares |
| John F. Lewis | | 200 shares |
| Southern Securities & Financing Company | By L. O. Benton, Pres. | 103 shares |
| A. M. Stewart | | 50 shares |
| W. E. Wilbourne | | 5 shares |

| | | | |
|---|---|---|---|
| C. J. F. Bene | Doyle Campbell | 35 | shares |
| Roy Blount | Doyle Campbell | 10 | shares |
| J. S. Cook | Doyle Campbell | 15 | shares |
| R. L. Davis | Doyle Campbell | 5 | shares |
| R. W. Dickinson | A. M. Stewart | 15 | shares |
| W. A. Little | Doyle Campbell | 15 | shares |
| Anna D. Newstadt | Doyle Campbell | 20 | shares |
| P. W. Pullin | A. M. Stewart | 30 | shares |
| A. J. Sams | H. D. Spivey | 5 | shares |
| 868 Joel A. Smith | Doyle Campbell | 10 | shares |
| Total stock voted against said resolution | | 613 | shares |

The following shareholders who, though present, did not vote at all, amounting to twenty-two (22) shares, being as follows:

| | (Proxy) | | |
|---|---|---|---|
| L. P. Cheatham | | 2 | shares |
| Bessie N. Proudfit, Exec. | | | |
| E. Tris Napier | | 10 | shares |
| J. W. Payne | | 10 | shares |
| Total stock notvoting | | 22 | shares |

A correct list of those voting in favor of said resolusion is as follows:

| | (Proxy) | | |
|---|---|---|---|
| C. M. Adams | | 10 | shares |
| W. T. Anderson | | 70 | shares |
| C. H. Andrew | | 8 | shares |
| C. H. Andrew, Trustee | | 1 | share |
| Guy Armstrong | E. P. Mallary | 20 | shares |
| Atlantic National Fire Insurance Company by John J. McKay, Sec. | | 108 | shares |

| | | |
|---|---|---|
| W. M. Bairman | W. D. McNeil | 15 shares |
| Mrs. W. M. Bairman | J. E. Hall | 1 share |
| C. H. Brandon | C. H. Andrew | 50 shares |
| L. H. Burghard | | 10 shares |
| Insurance Company by | W. T. Anderson, Pres. | 10 shares |
| R. P. Christian | E. P. Mallary | 10 shares |
| J. J. Cobb | | 35 shares |
| J. J. Cobb, Agent | | 1 share |
| Commercial & Savings Bank, by | J. J. Cobb, Cashier | 631 shares |
| W. A. Daniels | E. P. Mallary | 28 shares |
| A. L. Dasher | | 5 shares |
| J. Tom Dent | E. P. Mallary | 2 shares |
| Jesse Draper | E. P. Mallary | 1 share |
| 869 Robt. D. Draper | E. P. Mallary | 1 share |
| J. M. Dunwody | | 2 shares |
| L. S. Dure | | 43 shares |
| Peter C. Foley | E. P. Mallary | 2 shares |
| John W. Grant | E. P. Mallary | 25 shares |
| Mrs. Annie I. Grant | E. P. Mallary | 25 shares |
| J. Freeman Hart | E. P. Mallary | 5 shares |
| Mrs. Jennie Hagedorn, Exec. | E. P. Mallary | 7 shares |
| W. H. Hightower | E. P. Mallary | 5 shares |
| Evelyn H. Hubbel | C. H. Andrews | 5 shares |
| George H. Hubbel | C. H. Andrews | 10 shares |
| E. D. Huguenin | E. P. Mallary | 10 shares |
| J. L. Jessup | | 10 shares |
| E. N. Jelks | E. P. Mallary | 25 shares |
| T. M. Jelks | E. P. Mallary | 25 shares |
| Mrs. T. M. Jelks | E. P. Mallary | 2 shares |
| A. W. Lane | | 30 shares |
| Amanda B. Manee | C. H. Andrew | 10 shares |
| E. Atewart Manee | C. H. Andrew | 25 shares |

| | | |
|---|---|---|
| Macon Cooperage Company | C. H. Andrew | 1 share |
| E. Y. Mallary | E. P. Mallary | 10 shares |
| F. L. Mallary | E. P. Mallary | 10 shares |
| E. A. Middlebrooks | E. P. Mallary | 2 shares |
| J. W. Minter | E. P. Mallary | 5 shares |
| Cecil Morgan | E. P. Mallary | 50 shares |
| W. T. Meyers | E. P. Mallary | 10 shares |
| W. A. McKenna | E. P. Mallary | 2 shares |
| Lamar L. Oglesby | J. F. Lewis | 50 shares |
| T. C. Parker | | 150 shares |
| A. L. Patterson | E. P. Mallary | 50 shares |
| A. L. Patterson & Company | E. P. Mallary | 67 shares |
| F. C. Ries | | 35 shares |
| W. A. Roush, Agent | C. H. Andrews | 10 shares |
| W. A. Roush | C. H. Andrew | 10 shares |
| 870 R. L. Smith | | 35 shares |
| Mrs. J. E. Springer | E. P. Mallary | 10 shares |
| P. D. Todd | E. P. Mallary | 15 shares |
| John J. Wilkins | E. P. Mallary | 2 shares |
| C. M. Wiley | V. O. Roberson | 1 share |
| W. P. Wheeler | | 5 shares |
| B. A. Wright | | 50 shares |
| Oscar Bradley | | 25 shares |
| John F. Cone | John R. L. Smith | 30 shares |
| E. N. Lewis | E. P. Mallary | 131 shares |

Total number of shares voting for resolution 2049 shares

Affiant further says that in making up the list of shareholders voting in favor of said resolution, which list is attached to the certified copy of the resolution furnished to the Comptroller of the Currency, the names of Oscar Bradley voting twenty-five shares, John F. Cone, represented by John R. L. Smith as proxy, thirty shares, and E. N. Lewis, represented by E. P. Mallary as

proxy, one hundred and thirty-one shares, were omitted that said omission was a clerical error of the stenographer who copied the list, and in verifying the list for the purpose of certifying the same, the omission was not discovered. Affiant has referred to the original memorandum kept by him, as secretary at the time, and from said memorandum as well as from his positive recollection at the time, knows that the said three stock-holders whose names were omitted from the certified copy, did vote their stock in favor of said resolution, and that their names should have appeared on the list of stock-holders voting in favor thereof.

Upon verifying the additions, affiant discovers that the number of shares voting in favor of the resolution, including the three stock-holders whose names were inadvertently omitted, were two thousand and forty-nine shares (2049) instead of two thousand and
871 fifty-nine (2059) as stated, and that the number of shares voting against said resolution was six hundred and thirteen (613) instead of six hundred and three (603). The figures were incorrectly given through an error in addition which was not discovered.

Affiant further says that at said meeting the stock of the Central Trust Company, a corporation, was voted by its President, W. T. Anderson; that the stock of the Commercial and Savings Bank was voted by its cashier, J. J. Cobb, and that the stock of the Southern Securities & Financing Company, a corporation, was voted by L. O. Benton, its president and the stock of L. O. Benton & Brother, a partnership, was voted by L. O. Benton, a member of the firm. Neither the said W. T. Anderson, J. J. Cobb, nor L. O. Benton held any proxies or attempted to vote any proxies or the stock of any other persons save and except the corporation, of

which they were officers, and the firm of which L. O. Benton was a member.

JOHN J. McKAY.

Sworn to and subscribed before me this the ..... day of October, 1914.

Plaintiff offers By-laws of Commercial Nat'l Bank in evidence.

872 "November 28th, 1914.

Mr. L. O. Benton, President,
Southern Securities & Financing Company,
Monticello, Georgia.

Dear Sir:—

Your favor of the 27th inst., addressed to the Commercial National Bank, enclosing certificate No. 413 for 70 shares and No. 306 for 28 shares of the stock of that bank, with your request that the shares represented by the first certificate be transferred to Mrs. L. O. Benton and those represented by the second certificate to L. O. Benton, Jr., has been turned over to us for attention.

I am advised that these transfers cannot be made. The Commercial National Bank having been placed in voluntary liquidation by the action of its stockholders, its officers cannot transact any business for it or in its name except such as is incident to liquidation.

I am also advised that as it is possible that an assessment may be made upon the stockholders in order to pay the indebtedness of the bank, no change of the present status, so far as it might effect the liability for this assessment, can be made.

I am, therefore, returning to you herewith the certificates of stock which were enclosed.

Very truly yours,
Vice-President."

873 "August the 4th, 1914.

Mr. L. O. Benton,
Monticello, Ga.

Dear Sir:—

Replying to your favor of August the 3rd, beg to say that on making inquiry we find Commercial National stock offered at $60.00 with $40.00 bid. We did not feel authorized to make mention of your stock.

Should you care to sell you had best give us a minimum sale price and let us use our judgment and any occasion that might present itself to obtain above it.

Thanking you for writing us, we are,

Yours very truly,
W. M. DAVIS COMPANY,
By W. M. DAVIS.

(In the left hand corner of the letter is written in ink): "Since writing this letter have just had conversation with party with whom I can most probably place 100 shares tomorrow at $40.00. Advise me if you care to sell."

874 It was stipulated that in May, 1915, indictments were returned in this Court against E. N. Lewis, E. Y. Mallary, J. J. Cobb, F. L. Mallary, E. N. Jelks, and T. C. Parker for a violation of the national banking act in connection with the Commercial National Bank. And that they have been tried on one

indictment, the only indictment they were ever tried on, and there was an acquital in that trial.

875 The entire correspondence between the American National Bank and the Comptroller of the Currenry, beginning with the letter of August 1st, 1914, —so far as the same relates to the Commercial National Bank and the contract between that bank and the American National Bank, or as relates to the conduct of the American National Bank as liquidating agent of the Commercial National. Two or three of these letters were offered at the first hearing, and are necessary to be incorporated with these letters in the record, to complete the file, and was introduced by: .....:

Macon, Georgia, August 1, 1914.

Comptroller of the Currency,
Washington D. C.

Sir:—

This Bank by resolution of its Board of Directors has assumed the liabilities of the Commercial National Bank of this City, contained in a statement of liabilities furnished by the Commercial National Bank, and including deposits, bills payable, and other obligations.

The exegencies of the situation were such that the Directors of the Commercial National Bank, as security for such advances as this Bank will be called upon to make hereunder, have transferred to this Bank all of the assets of the Commercial National Bank. This was done in contemplation of formal voluntary liquidation of the Commercial National Bank by consolidation with this Bank, but without issuing stock in this Bank to the stockholders of the Commercial National Bank.

A meeting of the stockholders of the Commercial National Bank has been called for August 12th, at which time it is expected that formal action will be taken for liquidation and consolidation.

876 In the meantime, announcement has been made that all checks drawn against deposits in the Commercial National Bank will be honored upon presentation at this Bank, and the business of the Commercial National Bank will be taken over as far as possible; the liabiities of the Commercial National Bank amount to approximately $1,000,000.00 and its resources appear to be sufficient to discharge these liabilities, although that Bank is without ready money or quick assets available for that purpose.

We trust that the action taken will meet with your approval, and our Mr. Hillyer, who will be in New York on Monday, will visit you on his way home immediately thereafter, and explain in detail the action taken, and the steps in contemplation to carry out and perfect the plan for liquidation and consolidation.

Very respectfully."

Washington, August 3, 1914.

The President,
The American National Bank,
Macon, Ga.

Sir:—

Advice has been received at this office of the absorption of the Commercial National Bank of Macon by your association. Please state the facts in the case, and if such action has been taken, advise whether an increase in capital of the American National Bank is contemplated.

A national Bank may be placed in voluntary liquidation in accordance with the provisions of Section 5220,
U. S. R. S. and upon receipt of a request from
877 an officer of the Commercial National Bank for
blanks and detailed instruction in connection with liquidation, it will be complied with.

Respectfully,

W. J. FOWLER,
Acting Comptroller."

"August 5, 1914.

Mr. W. J. Fowler,
Acting Comptroller of the Currency,
Washington, D. C.

Dear Sir:

I am in receipt of your favor of the 3rd instant, which crossed in the mail a letter written by our cashier to the Comptroller, explaining as far as possible the details of the absorption of the Commercial National Bank of Macon by this association.

The directors of this association made a careful examination of the assets of the Commercial National and were fully convinces that the assets were amply sufficient to pay all of the liabilities, although the capital stock may be somewhat impaired. The agreement between the two associations was made by their boards of directors the Commercial National being without sufficient cash resources to safely continue in business.

It is proposed to liquidate under Sections 5220 and 5223, U. S. R. S. and a meeting of the stockholders of the Commercial National Bank has been called for August 12th, in order that the action taken by the directors may be ratified and the liquidation proceeded with under section 5220. No provision will be made for is-

suing stock in this association to the stock-
878 holders of the Commercial National Bank, but the assets, after paying all liabilities, will be disbursed pro rata to the stockholders.

I am enclosing herewith a request from the President of the Commercial National Bank for blanks and detailed instructions in connection with the liquidation, and will thank you to have them forwarded as promptly as possible, so that all things may be in readiness for the stockholders meeting on August 12th.

Will you be kind enough to inform me whether or not the Department will permit this Bank to act as liquidating agent?

If there is any further information desired, I will take great pleasure in furnishing it as promptly as possible.

Very respectfully,
President."

Washington, August 6, 1914.

The Cashier,
The American National Bank,
Macon, Ga.

Sir:—

Your letter of August 1, is received, in relation to the consolidation of the Commercial National Bank of Macon with your bank, your statement being noted that the assets of the Bank first mentioned were transferred to the American National Bank, and liabilities assumed by the latter in advance of formal action by the stockholders of the Commercial National Bank, which is to be taken at a special meeting called for that purpose to be held August 12. It is also noted that there is to be no issue of stock of the American National Bank

to the shareholders of the Commercial National.

An examination of the assets transferred to your Bank from the Commercial National Bank will be required which matter, together with other details of the consolidation, can be taken up when Mr. Hillyer, Vice President of the American National Bank, visits this office which you state will be in the near future.

Blanks and instructions relative to liquidation have been mailed to the cashier of the Commercial National Bank today.

Respectfully,
W. J. FOWLER,
Deputy Comptroller."

"Washington, August 7, 1914.

The President,
The American National Bank of Macon,
Macon, Ga.

Sir:—

Your letter of August 5th is received, in reference to the contemplated consolidation of the Commercial National Bank of Macon with your association, the plan involving the liquidation of the former.

A letter was addressed to you on August 6, in regard to the subject, and on the same day a communication was written to the cashier of the Commercial National Bank, containing detailed instructions relative to placing that bank in liquidation, and transmitting blanks to be executed and returned to this office.

In answer to your inquiry, you are advised that in adopting the resolution for liquidation of the Commercial National Bank there will be no objection to the shareholders appointing the American National Bank to act as liquidation agent.

It is noted that the consolidation is to be effected in accordance with the provisions of section 5223 U. S. R. S. You will find enclosed forms of resolution for adoption by the directors of each association in connection with the assignment and transfer of bonds and assumption of liabilities for circulation.

Respectfully,
W. J. FOWLER,
Deputy Comptroller."

Inclosures.

"August 8, 1914.

The Comptroller of the Currency,
Washington, D. C.

Sir:—

Your valued favor of the 6th instant, in relation to the consolidation of the Commercial National Bank of the Macon with this association, is received.

We are advised by the Cashier of the Commercial National Bank that he has also received blanks and instructions relative to liquidation, referred to in your letter. We will endeavor to see that these instructions, so far as this association is concerned, are fully carried out and your office promptly notified.

We note that an examination of the assets transferred to this association from the Commercial National Bank will be required. We shall be pleased for you to send examiner as soon as possible, in order that this examination may be made.

Mr. I. P. Hillyer, our Vice President, was in
881 your office on Tuesday last, and saw Hon. John Sekiton Williams, and other officers of

your office. Mr. Hillyer is attending a meeting of the Currency Association to-day, and we therefore, cannot advise you how fully he went into the details of this consolidation, or with what members of your office he conferred.

We are pleased to advise that the taking over of the assets of the Commercial National Bank and the assumption and payment of its liabilities has proceeded quite satisfactorily, and we have no doubt that the shareholders at their meeting on the 12th inst, will authorize the voluntary liquidation, and will ratify the contracts made by the directors.

We shall be pleased to keep your office fully advised, and are prepared at any time to submit such reports and furnish such information as may be required.

Respectfully,
AMERICAN NATIONAL BANK,
By President."

"Washington, August 12, 1914.

The President,
The American National Bank,
Macon, Ga.

Sir:—

Your letter of August 8, is received, and in reply you are advised that in view of the fact that the assets of the Commercial National Bank of Macon have already been transferred to your bank, no examination will be made at this time in connection with the consolidation of the two associations, but all assets improperly
882 taken over should be eliminated as soon as possible.

Respectfully,
W. J. FOWLER,
Deputy Comptroller.

"August 13th, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:—

We enclose herewith certified copy of a resolution passed by the Board of Directors assuming the circulation of the Commercial National Bank of Macon, Georgia, also certified copy of the resolution agreeing to act as liquidating agent for said Commercial National Bank, and ratifying contract between this association and said Bank, copy of which we are advised is being forwarded to you by the Cashier of that association.

We beg to advise further that we have taken over the Government moneys which were held on deposit by the Commercial National Bank, in pursuance of the appointment of this Association as a General Depository, notice of which is contained in the letter of the Assistant Secretary and Treasurer, dated August 4th, 1914.

We shall be pleased to have the National Bank Examiner examine the affairs of the Commercial National Bank in our hands as liquidating agent as soon as may be convenient.

Very truly yours,
Cashier."

883 "August 14, 1914.

The Honorable Comptroller of the Currency,
Washington, D. C.

My Dear Sir:—

We have already forwarded to you certified copies of resolutions adopted by our Board of Directors assuming the liability of the $200,000.00 of circulation of the Commercial National Bank.

We would thank you to transfer to the credit of our five per cent redemption fund the $10,000.00 to the credit of the five per cent redemption fund of the Commercial National Bank.

Very respectfully yours,

Cashier."

"August 14, 1914.

The Comptroller of the Currency,
Washington, D. C.

Sir:—

We acknowledge your letter of the 12th written by the Deputy Comptroller, in which you advise that no examination of the assets of the Commercial National Bank of Macon transferred to this association will be made at this time, 'but all assets improperly taken over should be eliminated as soon as possible,' We do not quite understand the meaning of the clause quoted. You have been furnished with a copy of the contract between the two associations, and of the resolution passed by the stockholders of the Commercial National Bank appointing this bank liquidating agent, and authorizing it to hold all assets transferred to secure the payment of amounts advanced and assumed by this association.

Kindly advise, in the light of the contract and
884 resolutions, which is meant by the expression 'all assets improperly taken over', which your letter says must be eliminated as soon as possible.

We are having a complete audit of the Commercial National Bank made by certified public accountants,

and as soon as this is completed we shall be glad to submit a copy of the same to your office, or to the examiner should it be desired.

Awaiting your further advices, we are,

Respectfully,

CAP-ATH.

Washington, August 17, 1914.

The President,
American National Bank,
Macon, Ga.

Sir:—

The receipt is acknowledged of your letter of August 14, in further reference to the consolidation of the Commercial National Bank of Macon with your association.

In reply you are advised that the assets of the Commercial National Bank having been transferred to the American National Bank in advance of the formal vote for liquidation, and an examination of the Commercial National Bank having been made in June last, it was decided not to make a special examination of the assets purchased by your association at this time, but to make it a few months later, and in the meantime it is suggested, as stated in letetr of the 12th instant, that in the event any prohibited assets were included in the items transferred to your bank, that they should be eliminated as promptly as possible in order that, when the
885 examination is made, the examiner will find only such assets as can be lawfully held by a national bank.

A letter has also been received from the Cashier of your bank, inclosing a copy of the resolution of the directors in which they assume the liability for redemption of the circulating notes of the liquidating bank.

That part of the cashier's letter of August 14, rela-

tive to transferring to the credit of the five per cent redemption fund of $10,000.00 at present standing to the credit of the redemption fund of the Commercial National Bank, will be attended to by the Treasurer of the United States at the proper time.

A letter has been addressed to the Commercial National Bank to-day advising them that it will be necessary to call another meeting of the shareholders, and again adopt a resolution placing the bank in liquidation, this being required by the fact that the notice provided by the articles of association was not given, and for the further reason that it is not possible to adopt a resolution making the liquidation effective on a date prior to that on which the meeting was held.

Respectfully,

W. J. FOWLER,

Deputy Comptroller."

"August 19, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:—

Receipt of your letter of August 17, in reference to the liquidation of the Commercial National Bank of Macon for the purpose of consolidation with this association, is acknowledged.

We note that it is not considered necessary
886 that an examination of the Commercial National should be made at this time. In the event any prohibited assets are included in the items transferred to this association, we will endeavor to eliminate them as promptly as possible, in order that when examination is made, the examiner will find only such assets as can be lawfully held by a national bank.

We are pleased to note that proper transfer of the redemption fund of $10,000 now standing to the credit of the Commercial National Bank will be transferred in due course to the credit of this association.

We regret to learn that the Commercial National Bank failed to comply with the requirements of its articles of association in giving the notice of the stockholders meeting. We are advised by the Cashier of that bank that meeting of the board of directors will be called at once, at which proper resolution will be adopted calling a new meeting of the stockholders, at which time the resolution to go into voluntary liquidation will be again adopted.

Respectfully,

"

"August 27th, 1914.

The Comptroller of the Currency,
Washington, D. C.

Dear Sir:—

We have not yet received the Treasurer's receipt for the $200,000.00 of bonds to secure the circulation that was taken over by us from the Commercial National Bank.

We would be pleased to have you advise us in regard to this matter at your convenience.

Very respectfully,

Cashier."

887 "Washington, August 31, 1914.

Cashier, American National Bank,
Macon, Ga.

Sir:—

In reply to your letter of August 27th, you are advised that the bonds have not as yet been withdrawn from the account of the Commercial National Bank of Macon, and redeposited for your account, by reason of the informality of the liquidating proceedings.

The Treasurer's duplicate receipts will be duly forwarded to you upon transfer and deposit of the bonds.

Respectfully,
W. J. FOWLER,
Deputy Comptroller."

"October 1, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:—

Receipt is acknowledged of the letter of Mr. W. J. Fowler, Deputy Comptroller, dated September 23, in regard to reporting the assets and liabilities of the Commercial National Bank of Macon which is in voluntary liquidation.

On August 1, the directors of the Commercial National Bank by resolution transferred to this association as security for amounts advanced and to be advanced to pay the depositors and other creditors of that bank, all of its assets, the transfer being made in contemplation of the voluntary liquidation of that bank as authorized by section 5220 and 5221 of the Revised Statutes. Subsequently a contract made in pursuance of this resolution between the two associations was entered into.

888 A meeting of stockholders of the Commercial was held on August 12, at which time more than two-thirds of the total number of shareholders ratified the action of the directors, and passed the resolution in the form furnished by your office, providing for the voluntary liquidation of the association, and appointing this association as liquidating agent. This meeting, however, was held after only ten days notice, and under advice from your office, thirty days being required another meeting of the shareholders was called, which meeting was held on yesterday, and at which meeting the action of the previous meeting was ratified, and a new resolution, providing for the voluntary liquidation of the bank, and appointing this association as liquidating agent was passed. The requisite two-thirds majority of stockholders, we are advised, voted in favor of these resolutions.

Pending this action by the stockholders, we have not thought it proper to transfer absolutely and as a part of the assets of this association the assets of the Commercial National, nor to assume in toto its liabilities The business between the two institutions has, therefore, been handled in the following manner:

The depositors have severally transferred their accounts to this association, or withdrawn their deposits as they preferred. This has been accomplished by having the Commercial National issue to the depositors checks for their balances, which were cashed by the American, and charged to the account of the Commercial. As the bills payable of the Commerial have matured, these have also been paid in the same way. Collections made on paper of the Commercial have been deposited to its credit with the American, and where customers of the Commercial have been taken over by

889 the American, and their paper renewed, the Commercial has been given credit in the same way as though the paper had been paid in cash. In other words, the American has kept a regular account with the Commercial just as it did with any other bank. This account appears now overdrawn something more than $500,000.00, and in our last published statement is included under the amount due from other national banks. Our statement of September 12, shows all of the assets of the Commercial which have been taken over by this association, and all liabilities which we have assumed, but does not include the assets held as collateral for the overdrafts of the Commercial, nor the bills payable and certificates of deposit of the Commercial which have not yet matured, or any of the deposits which have not been transferred to this association. While there would be no particular objection to assuming outright the remaining deposits, certificates, and bills payable, we would dislike very much to treat as assets all of the uncollected paper in favor of the Commercial, and its Bank Building and other miscellaneous property. We would hardly know how to treat this so as to be fair to the stockholders of the Commercial, and at the same time fair to ourselves. These assets could not be accepted by us at their face value nor at the values places upon them by the Commercial. In fact, we doubt whether the assets are sufficient to pay the amount advanced by this association, and the remaining liabilities of the Commercial, but the stockholders of that association would of course be unwilling to have so low a valuation placed upon these assets. As liquidating agents it is of course the duty of this association to get the best values for the assets which it can secure, and in our opinion the only fair way to adjust these values will be to carry the assets as we

have done heretofore simply as collateral for the obligations of the Commercial paid by us, and as they are collected reduce our balance against the bank
890 proportionately.

Prior to the resolution adopted on yesterday by the stockholders, we were advised that this was the only safe and proper way to handle the matter. In the light of the resolution placing the association in voluntary liquidation the transfer of assets and liabilities should be completed in any other manner, we shall be pleased to be advised as to how the accounts should be handled, and how the assets are to be valued.

Assuring you that it is our earnest desire and purpose to handle the entire matter in accordance with the statutes and rules of your Department, and in a manner which will result for the greatest good to the stockholders of the Commercial, and awaiting your further valued commands, we are,

Yours very truly,
Cashier.

P. S. We are enclosing a condensed statement of the condition of the Commercial National Bank at the close of business on September 29, which statement was submitted to the stockholders at their meeting on yesterday."

"Washington, October 15, 1914.

Mr. L. P. Hillyer,
Vice President the American National Bank,
Macon, Ga.

Sir:—

The copy of the resolution adopted by the board of directors of the American National Bank of Macon, in which they assume liability for the circulation of the

Commercial National Bank of Macon, Ga., under the provisions of Section 5223, U. S. R. S., is returned for completion. Please insert on the second line the date on which the meeting of the board was held, and promptly return the resolution to this office.

Respectfully,

Deputy Comptroller."

Inclosures.

891 "Treasury Department,
Office of the
Comptroller of the Currency.
Washington, D. C., October 21, 1914.

To Cashier,
The American National Bank,
Macon, Ga.

Inclosed is the duplicate receipt of the Treasurer of the United States for Two Hundred Thousand ..... .....Dollars, United States Two Per cent Registered Bonds of the loan of,

1930—$155,000,
1916— 25,000,
1918— 20,000,

.....

deposited to secure the redemption of Circulating Notes of your Association.

Respectfully,
W. J. FOWLER,
Deputy Comptroller of the Currency."

"January 18, 1915.

Honorable W. J. Fowler,
Deputy Comptroller of the Currency,
Washington, D. C.

Dear Sir:—

Yours of January 15th received. We do not appear to have ever received your letter of November 12th 1914, requesting detailed report. As we had no form to fill out, we enclose you herein the report of the condition of the Commercial National Bank at the close of business Saturday night, August 1914. We took the bank over on the morning of Monday, August 3rd.

We enclose you herein the quarterly report for the quarter ending December 31, 1919.

Very truly yours,

Vice-President.

P. S. In making out the receipts and disbursements for the quarter ending December 31st, 1914, we find this difficult to do—for the reason that while we took over the Commercial National Bank on August 892 3rd, and assumed all of their liabilities at that time, they opened up a window in your office and paid checks and received deposits for some days. They also collected some notes and made remittances for collections. We transferred their deposits to our books as their depositors would come in—everything being completely transferred at the present time.

The next quarterly statement to be rendered you can be made with ease.

Yours Ect.,

Vice President."

"February 23-1915.

Honorable W. J. Fowler,
Deputy Comptroller,
Washington, D. C.

My dear Sir:—

Replying to the attached, the Commercial National Bank of this City being in liquidation, there was no meeting of the stockholders held, and, consequently no board of directors elected.

Yours truly,

Cashier."

Enclosures.

Washington, March 3, 1915.

Mr. L. P. Hillyer, Vice President,
Amercian National Bank of Macon, Liquidating Agent, Commercial National Bank, in Liquidation, Macon Ga.

Sir:—

The receipt is acknowledged of your letter of recent date inclosing a report of condition of the Commercial National Bank of Macon, Georgia, at close of business on August 1, 1914, and your report as liquidating agent of that bank for the quarter ended December 31, 1914.

The report of condition of the Commercial National Bank of Macon August 1, 1914, shows assets and liabilities each amounting to $1,688,838.33. Your report as liquidating agent of that bank for the quarter ended December 31 shows collections and disbursements during the quarter amounting to $920,786.57, with liabilities of an equal amount. By comparing these two reports it appears that assets amounting to $442,949.62 have been collected and liabilities of an equal amount discharged without any entry being made in the report.

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You will find enclosed an additional blank and you are requested to file a new report covering all transactions from August 1, 1914, to December 31, 1914.

Respectfully,

W. J. FOWLER,

Deputy Comptroller."

March 6, 1915.

Hon. W. J. Fowler,

Deputy Comptroller of the Currency,

Washington, D. C.

Dear Sir:—

Yours of March 3rd, received: We enclose you herewith a revised report of the condition of the Commercial National Bank for quarter ending December 31, 1914, which we trust is what you want. If this report, which we enclose, varies from the report which you already have in any way, kindly disregard the other report. It was made out by one of our clerks, who might not have known just what information you wanted.

Very truly yours,

Vice-President."

Washington, D. C., March 31, 1915.

American National Bank, Liquidating Agent,

Commercial National Bank, Macon, Ga.

Sir:—

You are requested to promptly send to this
894 office on the accompanying blank your report, as liquidating agent of the Commercial National Bank of Macon, Ga., for the quarter ending March 31, 1915.

Respectfully,

W. J. FOWLER,

Deputy Comptroller of the Currency."

April 15-1915.

The Honorable Comptroller of the Currency,
Washington, D. C.

My dear Sir:—

We beg to enclose herewith our quarterly report— as liquidating agent for the Commercial National Bank for the quarter ending March 31st, 1915.

Respectfully,

Cashier."

Enclosure.

"Washington, June 4, 1915.

The Board of Directors,
American National Bank,
Macon, Ga.

Gentlemen:—

The report of the examination of your bank completed April 22, received with your letter of April 24, has been held pending receipt of further information from the examiner. Your statements are noted that over-due paper, including statutory bad debts, and slow and doubtful loans, are receiving close attention; and with respect to the assets taken over from the Commercial National Bank of Macon in 1914, and the real estate held over five years, which it is stated will be disposed of as soon as possible.

The examiner's report shows the following:

Overdue paper, including statutory bad debts, amounting to $156,230.41, of which $35,408 is considered doubtful.

In current loans 11 slow amounting to $182,474.05
and 5 doubtfuls amounting to 50,806.13

895 The report further shows that stock for debt and estimated worth $3,450 is not carried on the books. This asset should be restored to the books at a fair value and and disposed of as soon as possible.

Your statement is noted that the liquidation of the assets taken from the Commercial National Bank, upon which there may be a loss of some $50,000, is having the careful attention of the management and the board and being pushed as rapidly as conservation of the assets will permit losses to be charged off when determined. In this connection, you are advised that the examiner has recently informed this office that since the examination he has obtained information which inclines him to the belief that the estimate of loss on these assets will be considerably below the loss that will actually be sustained.

Please advise of the action taken with respect to the stock, and what reduction has been made in the amount of overdue, slow and doubtful paper, and in adjusting satisfactorily the assets taken from the Commercial National Bank. Advice is requested from time to time of the progress made in collecting these latter assets.

Respectfully,

T. P. KANE,
Deputy Comptroller."

Washington, July 7, 1915.

American National Bank, Liq. Agt.,
Commercial National Bank,
Macon, Ga.

Sir:—

You are requested to promptly send to this office on the accompanying blank your report, as liquidating agent of the Commercial National Bank of Macon, Ga., for the quarter ending June 30, 1915.

Respectfully,

W. J. FOWLER,
Deputy Comptroller."

896 "Washington, August 9, 1915.

The Vice President,
The American National Bank of Macon,
Macon, Ga.

Dear Sir:—

Referring to your letter of June 14, in reply to office communication of June 4, please advise promptly what progress has been made in liquidating the assets taken from the Commercial National Bank.

Respectfully,

T. P. KANE,
Deputy Comptroller."

"August 14, 1915.

Hon. T. P. Kane,
Deputy Comptroller of the Currency,
Washington, D. C.

Dear Mr. Kane:—

Yours of August 9th received: Progress in liquidating the assets taken from the Commercial National Bank is necessarily slow, although we have made some headway since our last report. The amount now due by the Commercial National Bank to the American National Bank of Macon is $418,229.53. Most of the paper is in our attorneys hands and are in suit. Our attorneys are pressing them as fast as possible. You and your attorney will no doubt recall that the writer and our attorney, Mr. Park, told you some weeks ago concerning suit against stockholders for their liability. We are doing everything in our power to liquidate the assets as fast as possible.

Very truly yours,
Vice President."

"Washington, September 27, 1915.

The American National Bank, Liquidating Agent,
Commercial National Bank,
Macon, Ga.

Gentlemen:—

You are requested to promptly send to this
897 office on the accompanying blank your report,
as liquidating agent of the Commercial National Bank of Macon, Georgia, for the quarter ending September 30, 1915.

Respectfully,
W. J. FOWLER,
Deputy Comptroller of the Currency."

"Washington, January 5, 1916.

The American National Bank of Macon,
Liquidating Agent, Commercial Nat'l Bank.
Macon, Ga.

Sir:—

You are requested to promptly sent to this office on the accompanying blank your report, as liquidating agent of the Commercial National Bank of Macon, for the quarter ending December 31, 1915.

Respectfully,
W. J. FOWLER,
Deputy Comptroller of the Currency."

Letters offered on the former hearing, and selected, and stated to be necessary to the completion of the letters above introduced, and asked to be incorporated in the record are as follows:

"September 18th, 1914.

The Honorable Comptroller of the Currency,
Washington, D. C.

My dear Sir:—

In our report to you as of September 12th, 1914, we did not include any of the assets or liabilities of the Commercial National Bank.

Our information is that we, as the liquidating agent of the Commercial National Bank, should also report condition of that institution. We would like to inquire if there is any special form on which this report is to be made, and if we are to make such
898 report before the stockholders of the Commercial have ratified the action of its board of directors.

If you will advise us fully as to what will be required of us by the Department in this matter we will take pleasure in giving you full information.

Very respectfully,

Cashier."

"Washington, September 25, 1914.

The Cashier,
The American National Bank,
Macon, Ga.

Sir:—

The receipt is acknowledged of your letter of September 18, and in reply you are advised that if, as appears to be the case, the assets of the Commercial National Bank of Macon had actually been transferred to the American National Bank and the liabilities of the former assumed by the latter on September 12, a new report of condition as of that date should be submitted on the enclosed blank which should include the assets and liabilities of the Commercial National Bank. You are requested to give the matter prompt attention.

Respectfully,

W. J. FOWLER,
Deputy Comptroller."

Inclosures.

"Washington, January 15, 1915.

The President,
The American National Bank,
Macon, Ga.

Sir:—

On September 30, 1914, the Commercial National Bank of Macon was placed in voluntary liquidation. By contract bearing date of August 13, 1914, the American National Bank agreed to pay all deposit and other liabilities of the Commercial National Bank including liabilities for redemption of circulating notes, all the assets of the Commercal National being transferred to the American National Bank, which latter association was to collect the same, reimburse itself for the
899 amounts advanced, and, when all liabilities had been fully discharged, to account and pay over to the shareholders of the Commercial National pro rata any surplus remaining in the hands of the American National Bank.

On November 12, 1914, you were requested to file a detailed report under the heading shown in the report of condition of the national bank, showing the assets transferred by the Commercial National Bank to your association and the liabilities assumed by you. The report in question has not been received, and you are again requested to forward it in order that it may be made a part of the records in the case.

You are also requested to file a report for the quarter ending December 31, 1914, on the blank enclosed. If the American National Bank has paid all the liabilities other than that to shareholders, the account on the liability side should not show any liability to depositors but should show instead liabilities to the American National Bank.

The filing of quarterly reports showing the progress of liquidation enables this office to give an answer to inquiring shareholders, and makes a permanent record of the liquidation which is of advantage to all concerned.

Respectfully,

W. J. FOWLER,

Deputy Comptroller."

Inclosure.

"July 25, 1916.

Hon T. P. Kane,

The Comptroller of the Currency,

Washington, D. C.

My Dear Sir:—

Referring to your letter of July 15th, inclosing copy of your letter of April first, beg to say that the following amounts have been written off in full:

| | |
|---|---|
| E. Hinson | $5216.07 |
| J. J. Cobb | 6222.00 |
| T. L. Caraker | 382.83 |

900 The following papers have been renewed to the amounts opposite each name, by being charged off:

| | |
|---|---|
| E. N. Jelks, | $18000.00 |
| Mallary Bros. Co., | 12000.00 |

The following papers have been reduced to the amounts opposite each name by actual payments:

| | |
|---|---|
| J. P. Brown | $10,238.00 |
| L. S. Dure | 25,066.70 |
| A. W. Turner | 10,228.19 |
| Mrs. E. Whitehurst | 17,330.00 |
| Capitol Savings Bank | 9,751.06 |

The account of the Commercial National Bank stands this date on our books as $207,306.61

The paper of Massee & Felton Lumber Company, B. L. Thane and H. H. Massee were placed in the doubtful column in error. We consider these papers good, and are at a loss to know why they were classed as doubtful.

We are borrowing money only from the Federal Reserve Bank, and our Board of Directors have given the officers of this bank full authority to do so.

Trusting the above will be satisfactory, I beg to remain.

Respectfully,"

(No date).

"The Board of Directors,
The American National Bank,
Macon, Ga.

Gentlemen:—

The report of an examination of your bank completed on March 17, has been received, together with your letter of the same date, in which the following promises are made:

That loans aggregating $6,209.00 are probably losses and collection will be pressed between now and June 30th.

Losses on doubtful paper will be charged off as soon as ascertained.

The account with the Commercial National Bank now amounting to $288,809.04, is being adjusted, and any resulting losses will be charged off when ascertained, and earnings warrant.

Sale of real estate held by the Bank over
901 five years carried, $19,916, will be presses.

The value at which stocks and bonds are carried are not excessive and it is not believed that loss will be sustained on the bonds of the Eagle River Mining Company carried at $37,776.40.

Efforts will be made to secure more liquid collateral, and overdue paper will be reduced as rapidly as possible.

In addition to the losses estimated in your letter, the examiner has classed $10,375. of the loan to Mallary Bros. Co. as a loss, and estimates a further loss of $50,000. in the account with the Commercial National Bank. The losses listed in your letter, together with the loss on the Mallary Bros Co. loan must be charged off, together with the loss on the Commercial National Bank account when determined.

The following is a list of the slow and doubtful paper contained in the examiner's report:

| | Slow | Doubtful |
|---|---|---|
| North Highlands Land Co | | $3,900.00 |
| W. R. Chambers | | 241.87 |
| E. N. Jelks | | 25,000.00 |
| E. Rinson | | 5,216.07 |
| M. Goldwater | | 121.87 |
| J. W. Wells | | 75.00 |
| R. K. Hines | | 4,614.80 |
| J. P. Brown | | 9,989.88 |
| Eagle River Mining Co. Bonds | | 37,776.40 |
| Masse & Felton Lbr. Co. Bonds | | 20,000.00 |
| Masse & Felton Lbr. Co. | $81,500.00 | |
| J. J. Cobb | 6,222.00 | |
| Capitol Savings Bank | 11,400.00 | |
| Eagle River Mining Co. | | 14,172.88 |

| | | |
|---|---|---|
| B. L. Thane | | 4,370.00 |
| Georgia Kaolin Co. | 18,900.00 | |
| Cecil Morgan | | 3,800.00 |
| Jones Bros | 20,501.76 | |
| S. C. Moore | 24,462.10 | |
| J. Pope Brown | 10,000.00 | |
| H. M. Massee | | 10,875.00 |
| Mallary Bros. Co. | 10,375.00 | 10,375.00 |
| Leon S. Dure | 36,727.46 | |
| John T. Moore | 54,990.71 | |
| A. W. Turner | 35,319.64 | |
| W. L. Means | 22,869.13 | |
| Mrs. E. Whitehurst | 21,500.31 | |
| E. B. Martin, Sr. | 28,394.28 | |
| A. D. Maxwell | 12,201.32 | |
| | $378,766.71 | $156,750.00 |

The examiner also estimates a depreciation of $1,-481.87 in the real estate owned by the bank.

The very large amount of slow and doubtful
902 paper should be given close attention, and liquidated as soon as possible, as losses are likely to result which will seriously impair the surplus.

The report further shows that general authority only is given for the borrowing of money. Specific authority should be given for each transaction involving the borrowing of money.

Please advise from time to time the progress made in reducing overdue paper; liquidating slow and doubtful assets, and the action taken to correct other matters criticized herein and in your letter of March 17.

Respectfully,

T. P. KANE, Deputy Comptroller."

"Washington, July 15, 1916.

Cashier
American National Bank,
Macon, Ga.

Sir:

Referring to your letter of July 6, you will find inclosed copy of letter of April 1, we requested.

Respectfully,

T. P. KANE,
Deputy Comptroller.'

Inclosure.

"March 17, 1916.

The Honorable Comptroller of the Currency,
Washington, D. C.

Sir:

We, the undersigned, Directors of the American National Bank of Macon, Georgia, have today met with your Examiner, and discussed with him the condition of this land.

We have gone over in detail overdue papers real estate, stocks and bonds, large lines of credit, the account with the Commercial National Bank, liquidating, and various other matters.

Much of the past due paper is in suit, or
903 is held up pending settlements of estates; making it, therefore, impossible to determine just what losses will result. It is our judgment, however, that the following notes are probable losses:

| | |
|---|---|
| F. D. Lawton | $900.00 |
| W. H. Coleman | 952.23 |
| T. L. Careker | 382.83 |
| Southern Engineer & Contracting Co. | 5,910.03 |

The above will probably be losses in whole or in part, and we will press with vigor any uncollected amounts between now and June 30th.

The following notes are regarded as doubtful. Some losses thereon may result, and, if so, they will be charged off as soon as ascertained:

| | |
|---|---|
| Elias Hinson | $5,216.07 |
| M. Goldwater | 121.10 |
| J. W. Wells | 75.00 |
| North Highlands Land Co. | 3,900.00 |
| Ross Chambers | 241.87 |
| E. N. Jelks | 25,000.00 |
| (This note is in the bankrupt Court. It is believed by our attorneys that the loss thereon, if any, will not exceed $7500.00). | |
| J. J. Cobb | 6,222.00 |
| Eagle River Mining Co. | 14,172.00 |

The account with the Commercial National Bank now amounting to $288,909.00 is being adjusted as rapidly as practicable. We hold collateral security on which it is estimated that $190,000 will be collected. From the stockholders of that Bank, we hope to collect, by a suit in equity, under Section .... of the Act of June 30, 1876 at, least $100,000.00. Figured on that basis the loss on the account will probably be from $80,000.00 to $90,000.00. On December 31st, last, we charged off ....., the loss then estimated on this amount, and it is our desire and purpose to charge off any further losses thereon just as rapidly as they are actually known, and our earnings warrant.

In this connection, we expect to institute
904 against the stockholders of the Commercial National Bank, probably within the next four to six months.

The real estate owned by this Bank is believed to be worth the amount at which it is carried on our books. The real estate market has been unusually dull for the past two years, but it is now gradually recovering and we will press the sale of all these properties with vigor, making special effort to dispose of the two pieces of property held for more than five years.

While the actual market value of our stocks and bonds is hard to determine, we are of the opinion that the values at which carried, are not excessive.

This Board agrees with your examiner that the value of the Bonds of the Eagle River Mining Company is necessarily problematical. But our investigation leads us to believe the we will sustain no loss thereon.

Particular attention has today been given to the discussion of slow paper. During the past two or three years we have found it necessary to strengthen a number of lines of credit, by obtaining real estate security thereto, and we appreciate the fact that it is slow security.

Conforming to the suggestion of the Examiner, these various lines will be frequently taken up in detail by this Board, and every possible effort made to collect, or to secure more liquid collateral.

We will also discuss at future Board Meetings, the various notes which are overdue, and will reduce the

amount of such papers rapidly and as materially as possible

Respectfully,

.....,
.....,
.....,
.....,
.....,
.....,
.....,
Directors."

905 The correspondence identified by Counsel, and offered for incorporation in the record under the above statements is as follows:

"Washington, August 3, 1914.

To the Cashier,
The Commercial National Bank,
Macon, Ga.

Sir:

It is reported that a vacancy exists in the board of directors of your bank, caused by the failure to qualify of John F. Cone.

This vacancy should be filled by the remaining directors as prescribed by Section 5148, U. S. R. S. A blank for the oath of the appointee is inclosed.

Respectfully,

W. J. FOWLER,
Deputy Comptroller."

Inclosures.

"Macon, Georgia, August 3, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:

We beg to advise you that the directors of the Commercial National Bank have called a meeting of the stockholders of this Bank to be held on August 12, for the purpose of consolidating with the American National Bank of this City by liquidation and the transfer of the assets of this Bank to the American National Bank. The exigencies of the situation were such that the directors felt justified in contemplation of action to this end by the stockholders to perfect arrangements today, by which the assets of this bank have been actually transferred to the American National Bank, and that Bank has assumed the liabilities of this Bank and will pay on presentation the liabilities of this Bank.

A letter has been mailed to each of the stockholders of this Bank, explaining this action, which we feel sure will meet the approval of the stockholders.
906 Mr. Hillyer, vice-president of the American National Bank, will be in New York on Monday, and on his return will stop at Washington and explain in detail the plans for completing the liquidation of this Bank, which plans we feel sure will meet your approval.

Very respectfully"

"August 5, 1914.

Mr. W. J. Fowler,
Acting Comptroller of the Currency,
Washington, D. C.

Sir:

The Cashier of this association wrote the Comptroller of the Currency on August 3rd advising of the proposed liquidation of this Association by the consolidation with the American National Bank of Macon, Georgia, and without provision being made for issuing stock in the American National Bank to the stockholders of this Association.

It is proposed to place this Association in voluntary liquidation in accordance with the provisions of Section 5220, U. S. R. S., and we will be greatly obliged if you will at once forward to me blanks and detailed instructions in connection with such liquidation.

As we have previously advised you, a meeting of the stockholders of this Association has been called for August 13th, and it is highly desirable that these blanks and instructions should be received before that meeting.

Very respectfully,
GSJ-ATH President."

"August 6, 1914.

The Cashier,
The Commercial National Bank,
Macon, Ga.

Sir:

The receipt is acknowledged of letter of August 1, relative to placing your association in voluntary
907 liquidation for consolidation with the American National Bank of Macon.

Under the law liquidation may be effected by the vote of the owners of two-thirds of the stock of the bank.

At the meeting of shareholders, notice and object of which should be given in conformity with your articles of association and by-laws, unless said notice is unanimously waived, no director, or other officer or employee, can legally act as proxy and vote the stock of another shareholder.

When the resolution to liquidate takes effect, notice to creditors to present claims for payment must be published for two months in a local and a New York newspaper.

The board of directors must adopt a resolution authorizing the Comptroller of the Currency to withdraw bonds held by the Treasurer of the United States as security for circulation, and designate some one not in the Government service to assign and transfer the securities. The bonds will be released upon the deposit within six months of date of liquidation of lawful money to retire circulating notes outstanding, provided a copy of the resolution and the Treasurer's duplicate receipt for the bonds are filed.

If the association is to be consolidated with the American National Bank, attention is called to Section 5223, U. S. R. S., which provides that a national bank which is in good faith winding up its business for the purpose of consolidating with another national bank, shall not be required to deposit lawful money for its outstanding circulation. If you intend to take advantage of this section, in addition to the adoption of the resolution by the directors of the Commercial National Bank authorizing the assignment of its bonds to the National Bank with which it is to be consolidated, it will be necessary for the directors of the American

National Bank to adopt a resolution (upon a
908 form which will be furnished upon request) in which they assume all liabilities for the out standing circulation of the liquidating bank.

A copy of the contract entered into between the two banks, signed by the proper officers of each, is desired; and upon transmitting the copy of the resolution adopted by the shareholders of your bank, placing the association in liquidation, there should be submitted a detailed statement of assets transferred to the American National Bank, and of liabilities assumed thereby, together with a detailed statement of the assets still remaining in the hands of the liquidating agent, or committee, and of liabilities unsatisfied.

It is noted that a meeting of the shareholders of the Commercial National Bank has been called for August 12, and that on August 1, in advance of the formal vote for liquidation, the bank's assets were transferred to the American National Bank, which has assumed the liabilities and will pay, upon presentation, all the indebtedness of the association. It is further noted that Mr. Hillyer, Vice President of the American National Bank, plans to visit Washington in the near future, and will call at this office to explain in detail the course desired to be pursued in connection with the consolidation.

Blanks are enclosed for report of the action taken by the shareholders of your bank, together with the action taken by the directors, and affidavits covering publication of the notice of liquidation.

Respectfully,

W. J. FOWLER,
(Inclosure.) Deputy Comptroller."

"Aug. 8, 1914.

Mr. W. J. Fowler,
Deputy Comptroller of the Currency,
Washington, D. C.

Dear Sir:

I am duly in receipt of your favor of the 6th instant, containing instructions for liquidation of the 909 Commercial National Bank, of this City, for consolidation with the American National Bank of Macon.

I thank you for the form enclosed, and will report fully to you immediately after the meeting of the stockholders of this bank, which has been called for August 12th, 1914.

Very respectfully,
COMMERCIAL NATIONAL BANK,
By ....., Cashier."

GSJ—ATH

"No. 502.

Treasury Department
Office of the Comptroller of the Currency.
Washington, D. C.

Duplicate.

Aug. 11, 1914.
8/10

Commercial National Bank of Macon, Georgia.

The committee specially appointed to witness the destruction of National Bank Notes, have certified that the following described mutilated notes of your Bank were totally destroyed this day, in their presence, under the provisions of Section 5184, of the Revised Statutes:

| No. of notes | Denominations | Amount | Total |
|---|---|---|---|
| 340 | Five Dollar Notes | $1700 | |
| 410 | Ten Dollar Notes | 4100 | |
| | | | $5800.00 |

The foregoing is a true copy of the record of destruction of the above described national-bank notes.

W. J. FOWLER,
Acting Comptroller of the Currency.

Attested by
M. M. King,
Agent for the Bank."

"August 12th, 1914.

24919.

Comptroller of the Currency,
Washington, D. C.

Sir:

You are advised that at meeting of the stockholders of this association, held, pursuant to notice in accordance with the by-laws, on August 12th, 1914, a resolution was passed providing for the voluntary liquidation of this association for the purpose of consolidat-
910 ing with the American National Bank of Macon. We enclose herewith:

1. Resolution of the stockholders to place the association in voluntary liquidation, and appointing the American National Bank liquidating agent, said resolution showing the stockholders voting therefor.

2. A copy of the contract between this association and the American National Bank, signed by the respective officers.

3. A certified copy of the resolution of the Board of Directors, transferring the assets of this association to the American National Bank in consideration of the assumption of the liabilities by the said bank.

4. A certified copy of the resolution of the stockholders ratifying the action of the Board of Directors and the contract entered into between the two associations.

5. A statement of the condition of this association at the close of business August 1st, 1914, at which time the transfer to the American National Bank became effective. A detailed statement of the assets transferred and the liabilities assumed is now being prepared by Alonzo Richardson & Company, certified public accountants of Atlanta, Georgia, and a copy of this statement will be furnished as soon as completed.

6. A certified copy of the resolution authorizing the Treasurer of the United States to transfer to the Treasurer in trust for the American National Bank the bonds of this association held as security for the circulating notes, together with the original receipt of the Treasurer for said bonds.

We beg to advise that notice of liquidation is now being published in The Macon Telegraph, a newspaper of Macon, Georgia, and in the Wall Street Journal, of New York. Affidavit showing publication will be furnished your office as soon as the publication is completed in accordance with the statutes.

911 If anything further is required in connection with the matter, or any phase thereof, we shall be pleased to have you call our attention to it.

Yours very truly,

NLH. Enc.—6— Cashier."

"August 19, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:

The receipt of yours of the 17th inst., with reference to the liquidation of this Association for the purpose of consolidation with the American National Bank of Macon, is acknowledged.

We regret the oversight in failing to follow the articles of association relative to the notice required for the meeting of stockholders. We have a by-law provision authorizing the meeting of stockholders to be held upon ten days' notice, and we followed this by-law, overlooking the requirement of the articles of association. I beg to advise that a meeting of the Board of Directors will be held at once at which time a resolution will be passed, calling a meeting of stockholders to be held after thirty days' notice, at which time the resolution authorizing the liquidation of the association will be again adopted.

We note your request that a detailed statement of assets transferred to and liabilities assumed by the American National Bank on August 1st be forwarded with the resolution authorizing liquidation. We will endeavor to furnish the statement as directed. We also note that the resolution for liquidation can not
912 be made to relate back. The assets of the association are now held by the American National Bank as security for advances made and to be paid on the liabilities of this Association. We understand that this is proper, although the formal liquidation cannot begin until the resolution has been passed by two-thirds vote of the stockholders at a meeting properly called and held.

We also note your direction that all liquidating dividends paid to shareholders be reported, and that quarterly reports must be submitted showing receipts and disbursements, with assets on hand and liabilities unsatisfied. We will endeavor to comply fully with the requirements of your Department.

Very truly yours,

....."

No. 581.

Duplicate

Treasury Department.
Office of the Comptroller of the Currency.

8/21

Washington, D. C., August 24, 1914.

Commercial National Bank,
Macon, Ga.

The Committee especially appointed to witness the destruction of national-bank notes have certified that the following described mutilated notes of your bank were totally destroyed this day, in their presence, under the provisions of Section 5184 of the Revised Statutes:

| No. of Notes | Denominations | Amount | Total |
|---|---|---|---|
| 360 | Five Dollar Notes | $1800 | |
| 360 | Ten Dollar Notes | 3600 | |
| | | | $5400. |

The foregoing is a true copy of the record of the destruction of the above described national bank notes.

F. P. KANE,
Acting Comptroller of the Currency.

Attested by,
GEO. D. ASHTON,
Agent for the Bank."

"August 31, 1914.

Hon. Comptroller of the Currency,
Washington, D. C.

Sir:

As this bank has gone into voluntary liquidation, we are taking the liberty of returning herewith
913 your confidential letter and inquiry of August 12th.

Trusting that this action is in accordance with your wishes, we are,

Respectfully,

Cashier."

B/L

129 No. 543

Treasury Department.
Office of the Comptroller of the Currency. 9/1.

Washington, D. C., Sep. 2, 1914.

Commercial National Bank,
Macon, Ga.

The Committee specially appointed to witness the destruction of National-bank notes have certified that the following described Mutilated Notes of your bank were totally destroyed this day, in their presence, under the provisions of Section 5184 of the Revised Statutes:

| No. of Notes | Denominations | Amounts | Total |
|---|---|---|---|
| 280 | Five Dollar Notes | $1400. | |
| 480 | Ten Dollar Notes | 4800. | |
| | | | $6200. |

The foregoing is a true copy of the record of destruction of the above described national-bank notes.

F. P. KANE,
Acting Comptroller of the Currency.

Attested:
M. M. KING,
Agent for the Bank."

"Washington, September 3, 1914.

Cashier,
Commercial National Bank,
Macon, Ga.

Sir:

In view of your notice of contemplated liquidation, no more incomplete currency will be forwarded to your bank to replace the mutilated notes redeemed and destroyed, unless you direct otherwise.

These destructions will be placed to your credit, in lieu of that amount of lawful money required
914 to release your bonds upon liquidation.

Respectfully,
F. P. KANE, Deputy Comptroller."

"Duplicate. No. 879.

Treasury Department.
Office of the Comptroller of the Currency. 9/11

Washington, D. C., Sept. 15, 1914.

Commercial National Bank,
Macon, Ga.

The Committee specially appointed to witness the destruction of national-bank notes have certified that the following described Mutilated Notes of your bank were

totally destroyed this day, in their presence, under the provisions of Section 5184 of the Revised Statutes:

| No. of Notes | Denominations | Amount | Total |
|---|---|---|---|
| 240 | Five Dollar Notes | $1200. | |
| 170 | Ten Dollar Notes | 1700. | |
| | | | $2900 |

The foregoing is a true copy of the record of destruction of the above described national-bank notes.

F. P. KANE,
Acting Comptroller of the Curerncy.

Attested by,
M. M. KING,
Agent for the Bank."

"Duplicate No. 632.

Treasury Department.
Office of the Comptroller of the Currency. 9/19

Washington, D. C., Sept. 21, 1914.

Commercial National Bank,
Macon, Ga.

The Committee specially appointed to witness the destruction of national-bank notes have certified that the following described Mutilated Notes of your bank were totally destroyed this day, in their presence, under the provisions of Section 5184 of the Revised Statutes:

| No. of Notes | Denominations | Amounts | Total |
|---|---|---|---|
| 220 | Five Dollar Notes | $1100. | |
| 200 | Ten Dollar Notes | 2000. | |
| | | | $3100. |

The foregoing is a true copy of the record of destruction of the above described national-bank notes.

F. P. KANE,
Acting Comptroller of the Curerncy.

Attested by

M. M. KING,
Agent for the Bank."

"Duplicate by No. 657.

Treasury Department.
Office of the Comptroller of the Currency. 9/28

Washington, D. C., Sept. 29, 1914.

Commercial National Bank,
Macon, Ga.

The Committee specially appointed to witness the destruction of national-bank notes have certified that the following described Mutilated Notes of your bank were totally destroyed this day, in their presence, under the provisions of Section 5184 of the Revised
915 Statutes:

| No. of Notes | Denominations | Amounts | Total |
|---|---|---|---|
| 280 | Five Dollar Notes | $1400. | |
| 160 | Ten Dollar Notes | 1600. | |
| | | | $3000. |

The foregoing is a true copy of the destruction of above described national bank notes.

F. P. KANE,
Acting Comptroller of the Currency.

Attested by,
M. M. KING,
Agent for the Bank."

"October 3 ,1914.

Comptroller of the Currency,
Washington, D. C.

Sir:

I beg to advise that on September 30, 1914, a resolution was passed by the stockholders of the Commercial National Bank of Macon, placing the Association in voluntary liquidation under the provisions of Section 5220 and 5221 of the United States Revised Statutes, said resolution being adopted by more than a two-thirds vote, thirty days' notice of the meeting having been given. I enclose herewith certified copy of this resolution on Treasury Form 1985.

I am also enclosing herewith a certified copy of the entire minutes of the meeting, in which you will note the resolution is included.

It will be recalled that a resolution placing the association in liquidation was passed at a meeting of stockholders held on August 12th, 1914, but that notice of this meeting was not given for the requisite thirty days as required by the articles of association, and under advise from your office the second meeting was called. We furnished you on August 12, a copy of the contract between this association and the American National Bank, statement of the condition of this Association at the close of business on August 1, and certified copies of the resolutions passed by the Board of Directors and by the stockholders. I am advised that a copy of the audit made by Alonzo Richardson & Company, certified public accountants, showing in detail the assets and liabilities of the association,
916 has been furnished you.

If there is anything further to be attended to by this Association or its officers at this time, we will be pleased to have our attention called to the matter.

Awaiting your further valued commands, I am,
Yours very truly,

Cashier."

"The Commercial National Bank.
Macon, Georgia.

24919. October 9, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:

The receipt is acknowledged of your favor of the 6th. instant, relative to the resolution providing for the voluntary liquidation of the Commercial National Bank of Macon, certified copy of which resolution was forwarded you on October 8.

A list of stockholders voting on the resolution was furnished me by Mr. John J. McKay, who acted as secretary of the stockholders' meeting. I did not undertake to verify this list from the original memoranda kept by the Secretary, and the Secretary himself seems not to have done so. Accompanying the resolution, I transmitted to you a complete transcript of the minutes of the stockholders' meeting. By comparing this list of the stockholders present. By comparing this list with the vote on the resolution for voluntary liquidation, it will be seen that the following stock is omitted entirely in the list of those voting for the resolution, against the resolution, and not voting at all, to-wit:

| | |
|---|---|
| Oscar Bradley ..... | 25 shares. |
| John F. Cone, John R. L. Smith, proxy | 30 shares. |
| E. N. Lewis, E. P. Mallary, proxy .... | 131 shares. |

All of this stock was actually voted in favor of the resolution. I enclose herewith affidavits of Oscar Bradley, John R. L. Smith, and E. P. Mallary, to that
917 effect, also my own affidavit supporting that of Mr. Mallary. I am enclosing affidavit of Mr. John T. McKay, the Secretary of the Meeting, showing how the mistake occurred in copying the list.

I have undertaken to furnish another copy of the resolution, embracing therein the correct vote on this resolution, as it was actually taken at the meeting, and I trust with the affidavits showing how the error occurred and the fact that more than two-thirds of the stock was actually voted in favor of the resolution will be sufficient without the necessity of calling another meeting of stockholders, especially as more than two-thirds have now on two separate occasions voted in favor of the liquidation.

You also state that Messrs. W. T. Anderson, J. J. Cobb and L. O. Benton, members of the Board of Directors, held proxies, and voted same in violation of the provisions of the National Bank Act. I think you are in error as to this. The Minutes of the meeting show that Mr. W. T. Anderson voted the stock of the Central Trust Company, of which Company he is the president. He did not hold a proxy, but the Central Trust Company was regarded as personally present through its president. Mr. J. J. Cobb likewise voted the stock of the Commercial & Savings Bank, of which he is the Cashier. This was done under a resolution of the Board of Directors of that Bank. As a member of the Board of Directors, of that Bank, I know that such resolution was passed.

L. O. Benton voted the stock of the Southern Securities & Financing Company, of which he is President and also voted the stock of L. O. Benton & Brother, he being the senior member of the firm. These directors did not vote as holding proxies, but the corporations were treated as personally present through their executive officer. The affidavit of Mr. McKay, above referred to, shows this to be the case.

I trust in the light of this information and the correction of the certified copy of the resolution so as to make it correspond with the facts, the liquidation can be proceeded with without the necessity of further action on the part of the stockholders.

Awaiting your further valued commands, I
918 am,

Yours very truly,"

"Treasury Department.

Washington. October 9, 1914.

Cashier,
Commercial National Bank,
Macon, Ga.

The new report of condition of your bank for June 30, called for in office letter of August 22, has not yet been received. Please furnish this statement at once.

Respectfully,

T. P. KANE,
Deputy Comptroller."

"Treasury Department.

Washington, October 13, 1914.

The Cashier,
The Commercial National Bank,
Macon, Ga.

Sir:

The receipt is acknowledged of your letter of October 9, inclosing a corrected copy of the resolution adopted by the shareholders of the Commercial National Bank on September 30, 1914, placing the association in voluntary liquidation to take effect on that date. It is noted that 186 shares of stock voted for liquidation was omitted from the former resolution, and you inclose the affidavits of three of the stockholders that this stock was actually voted in favor of the resolution.

Your statement is noted that Messrs. W. T. Anderson, J. J. Cobb and L. O. Benton did not act as proxies at the meeting of shareholders, but that in voting the stock of the bank in which they are officers they merely acted as their personal representatives.

As stated in letter of August 27, 1914, there
919 should be promptly furnished a detailed statement of the assets transferred to and liabilities assumed by the American National Bank at date of liquidation, together with a statement of the assets remaining in the hands of the liquidating agent and liabilities unsatisfied on that date.

When any liquidating dividends are paid to shareholders advice as to per cent and date of payment should be furnished.

On January 1, 1915, and quarterly thereafter until all claims of depositors and other creditors have been satisfied report should be submitted to this office by the liquidating agent, showing the receipts and disburse-

ments during the quarter assets on hand and liabilities unsatisfied. Blanks will be furnished at the proper time.

Respectfully,
W. J. FOWLER,
Deputy Comptroller."

"Treasury Department.
Office of the Comptroller of the Currency.

Washington, D. C., October 29, 1914.

To Cashier,
Commercial National Bank,
Macon, Ga.

Sir:

In accordance with the requirements of the 5167th Section of the Revised Statutes, you are hereby advised that two hundred thousand dollars of United States Bonds deposited with the treasurer of the United States, and held by him to secure the redemption of the Circulating Notes of your Association, have been assigned to The Commercial National Bank of Macon, Ga.

920 The bonds so assigned are described as follows:

| No. of Bonds | Numbers | Loan | Denominations | Amount |
|---|---|---|---|---|
| 5 | 52586-90 | 1930 2% | | $5000. |
| 6 | 19775, 19980, 20008, 20201, 23685, 23689 | 1930 2% | | 3000. |
| 12 | 91538-40, 92-297, 92377-8, 922844-45 103869-70, 103876-7 | 1930 2% | | 12000. |

| | | | |
|---|---|---|---|
| 5 | 7639-43 | 1916-18 2% | 1000. |
| 2 | 7992-3 | 1916-18 2% | 20000. |
| 2 | 3647-8 | 1916-18 2% | 20000. |
| | | Total Amount | 200,000 |

Treasurer's receipt cancelled ..... ...
Treasurer's receipt of ....., inclosed. herewith indorsed.

Above bonds have been transferred to The Teasurer of the United States in trust for the American National Bank, Macon, Ga., under Sec. 5223, U. S. R. S.

Respectfully,

W. J. FOWLER,
Deputy Comptroller."

"Treasury Department.

Washington, October 24, 1914.

The Board of Directors,
Commercial National Bank,
Macon, Ga.

Gentlemen:

The report of condition of your bank for June 30, repeatedly requested, has not yet been received. Unless this statement if promptly furnished, it will be necessary to send an examiner, at the bank's expense, to procure it.

Respectfully,

T. P. KANE,
Deputy Comptroller."

921 "October 27, 1914.

Honorable Comptroller of the Currency,
Washington, D. C.
Sir:

We respectfully enclose you herewith affidavit from the Macon Telegraph Publishing Company relative to publication of notice of liquidation of this bank. This notice of liquidation has also been published for the required length of time in the Financier of New York, but as you sent us only one printed form of affidavit we have not obtained the proper certificates from them. Kindly send us another one of your forms, No. 1989, in order that we may send this to your office.

Respectfully,

Cashier."

"October 27, 1914.

Honorable Comptroller of the Currency,
Washington, D. C.
Sir:

Receipt is respectfully acknowledged of your favor of October 24th enclosing a blank form of statement of condition as of June 30th. We regret to note that this has been repeatedly requested, and in explanation of your delay, we respectfully advise that on account of this bank having gone into liquidation your letter of October 9th has only come today to the attention of the writer.

Kindly advise us at once of any inaccuracies in the form which are forwarded your office in order that these may be corrected in the new statement which we forward you.

Awaiting your further advices,

Very truly yours.

Cashier."

'Treasury Department.

Washington. October 30, 1914.

To Cashier,
The Commercial National Bank of Macon, (in liquidation)
Macon, Ga.

922 Sir:

The receipt is acknowledged of your letter of October 27th, enclosing affidavits from the Macon Telegraph Publishing Company of the publication of the notice of liquidation of your Bank. The affidavit of publication of the New York notice was received from the publisher of the Financier of New York on October 23, 1914.

Respectfully,

W. J. FOWLER,
Deputy Comptroller."

The copy of the letter to the stockholders' committee of the Commercial signed by E. P. Mallary and identified by Mr. Souder, is as follows:

"December 2, 1914.

Stockholders' Committee,
Commercial National Bank,
City.

Gentlemen:

Mr. S. C. Moore is negotiating a sale to Mrs. J. B. Cobb of the house just east of his home place, the tract being described as follows:

'Lot on Forsyth Street, known as No. 604 Forsyth, and fronting on Forsyth Street fifty (50) feet, and running back on Boundary Street one hundred and

thirty-eight (138) feet, and on the western edge next to the residence lot of S. C. Moore one hundred and forty-three (143) feet.'

We have examined the title and approved it subject to a first mortgage and subject to a second mortgage in favor of the Commercial National Bank. We understand that it has been practically agreed by your committee that the Commercial National Bank make some settlement with Mr. Moore, such as will authorize the satisfaction of the mortgage in favor of the Commercial National Bank.

We do not desire to ask any of the officers of the Commercial National Bank to make us a quit claim until proper action has been taken by you authorizing such quit claim, and we cannot, of course, pass
923 the title until the second mortgage is out of the way. At your committee's meeting this afternoon kindly pass such resolution as is appropriate and advise us. If you will have indorsed at the bottom of this letter in substance 'The above quit claim authorized' signed by some member of your committee, this will, of course, be satisfactory:

The letter with this indorsement may be left with Mr. Hillyer or someone else at the bank, and we can call and get it.

Yours very truly,

MALLARY & WIMBERLY,
EPM/M E. P. MALLARY."

The letter from L. O. Benton to Leon S. Dure, the signature being identified by Mr. Souder is as follows:

"Monticello, Georgia,
October 9, 1914.

Mr. Leon S. Dure,
Macon, Ga.

Dear Sir:

I am in receipt of your letter of the 8th instant requesting me to meet with the stockholders committee of the Commercial National Bank at their next meeting to be held in Macon, on the 12th instant. I note that the question of turning over to the Central Trust Company certain assets belonging to the Commercial National Bank will be one of the matters to come before the meeting. For two reasons it will be impossible for me to be in Macon on the date named—first, because of a previous engagement in a different section of the State, and second, because I would not care to be a party to a meeting of this kind where it is proposed to turn over to the Central Trust Company any of the assets of the Commercial. I want to go on record as being unalterably opposed to a proposition of this kind, and especially so since we have been unable to have the affairs of the Commercial properly probed to find out the status of the bank, and its transactions with other closely allied corporations. It is my understanding that some of the members of the stockholders'
924 committee are interested in the Central Trust Company, and if this be true, I do not see how they can impartially pass on the proposition when it comes before them. In my opinion this is a matter for the Courts to pass on.

Very truly yours,

L. O. BENTON, President."

There are a few other minutes of the Commercial National that go in the records, and it was agreed by all counsel that they be copied in the record as the other records had been, and the minutes show a letter written to the Comptroller on June 10th, 1914, evidently signed by the directors,—it purports to be so signed, with reference to an examination that being made by the bank examiner, and the letter is as follows:

"The Commercial National Bank,
Macon, Ga.

June 10th, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:

We, the undersigned, Directors of the Commercial National Bank of Macon, Ga., beg to advise you that we are familiar with all of the bills and notes forming part of the assets of the above named bank and declare to the best of our knowledge and belief that all signatures and indorsements on the same are genuine; that all collaterals pledged as security for any of the aforesaid bills and notes are in the custody or control of the bank; and that all of the aforesaid bills and notes are good and collectible, with exceptions as stated below; and that excess loan law will not be violated again, by accommodation notes or otherwise.

After discussing the past due loans and the larger lines with the Examiner, we estimate loans amounting to $2620.82 as a loss and other loans amounting to $4423.93 we consider to be doubtful.

The following excess loans have been called
925 to our attention by the Examiner:

| | | |
|---|---|---|
| Jelks Brick Co. | $2,000.00 | |
| T. N. Jelks | 11,455.29 | |
| E. N. Jelks | 39,376.54 | |
| Drafts | 10,433.73 | $63,265.56 |
| Beechwood Farm Co. | | 40,389.66 |

Our attention has also been called to the fact that the liability for Bills payable and Re-discounts is $25,-917.66 in excess of the amount allowed by law.

We beg to advise that we will have the excessive loans and the extensive liability for money borrowed reduced until they come within the limits allowed and will advise you as each one is reduced.

The following criticisms have also been made by the examiner:

Overdrafts carried as cash items. Failure to report in last report of condition at close of business on March 4th, 1914, overdrafts, bad debts and loans secured by real estate. Several instances in which collateral was not properly indorsed or assigned. Failure to record instruments held as collateral on loans secured by real estate. Anticipation of rent, by crediting to profits the rent derived from offices in the bank building for the year in advance. Failure to have some of the stock certificates properly assigned before transferring same and issuing new certificates. Failure to credit at time of issue all checks drawn on correspondent Bank. Premiums on United States Bonds.

We will charge off before the end of the current dividend period all loss which can be actually determined and will reduce the amount of bad debts and past due paper as rapidly as possible; we will also charge off $1000.00 from the amount carried as premiums on U.

S. bonds. We will have overdrafts properly posted hereafter and reported in statements.

In regard to the amount loaned to the various corporations in which director Parker is interested, we beg to advise that we believe these loans to be perfectly good, but are arranging to have them reduced, and we expect to succeed in having them reduced very materially in the near future.

926

All of the foregoing and any other criticisms will be given our attention.

Respectfully,

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.....,
.....,
.....,
.....,

Another letter dated in the minute book of the Commercial written by directors of the Commercial to the Comptroller on June 13th, 1914, in further reference to the same examinations as follows:

"The Commercial National Bank.

Macon, Ga., June 13th, 1914.

Comptroller of the Currency,
Washington, D. C.

Sir:

We, the undersigned, directors of the Commercial National Bank of Macon, Ga., beg to advise you that we have been called together again for the purpose of further discussing the affairs of the above named bank.

The situation has been fully gone into by the examiner and the present condition of the bank and its management severely criticized; we have been advised that immediate and radical steps must be taken to put the bank into satisfactory condition and that the Examiner is going to recommend more frequent examination until the condition has been made satisfactory.

We beg to advise that while we realize that we have heavily over loaned and likewise have several lines of credit which are larger than should have been permitted, there is our belief absolutely no question as to the solvency of the bank; and that every possible effort will be made to reduce these lines as well as any other ones which are not in the opinion of the officers, Finance Committee and Board entirely satisfactory. We
927 also realize the gravity of the situation resulting from the holding up of checks for the transfer of funds from the account of the Treasurer of the United States as well as that of holding over remittances for the account of correspondent banks.

In this connection the management of the bank from now on will be assisted and guided by the addition of Mr. W. T. Anderson to the Finance Committee and it is understood that Mr. Anderson and Mr. Dure are to be consulted in everything in connection with the bank and to have general supervision of its affairs.

We expect to be able to make material progress in the straightening out of the bank's affairs and will start to work at once with that end in view.

Respectfully,

.....
.....,
.....,
.....,
.....,
.....,
.....,
.....,
....."

The minutes of the meeting of July 1, 1914, at which there was a letter incorporated in the minutes, an original letter from T. P. Kane Deputy Comptroller, dated June 29th, 1914, in regard to the condition of the bank, and making various recommendations in regard to it, and the answer of the directors is as follows:

"The Commercial National Bank.

Macon Ga., July 1, 1914.

An informal meeting of the directors of the Commercial Bank of Macon was held of July 1, 1914.

Those present were as follows: E. Y. Mallary, E. D. Huguenin, F. C. Ries, J. J. Cobb, Cecil Morgan, Leon S. Dure, A. F. Lane, Oscar Bradley, E. N. Jelks, C. M. Adams, E. N. Lewis, these being all the directors who were in the City.

The attached letter from the Comptroller of the Currency was read and fully considered and the attached copy of a reply was mailed to him, signed by all those present.

"Treasury Department.

Washington, June 29, 1914.

The Board of Directors,
928 Commercial National Bank,
Macon, Georgia.

Gentlemen:

The report of the examination of your bank made June 9-10-12-13 has been received, together with your letters of June 10 and 13.

Your letters have received careful attention. On the day of the receipt of this letter the directors are requested to advise, in detail, what progress has been made in adjusting all matters of criticism in accordance with promises contained in their letters, stating particularly the amount of bills payable and rediscounts.

Every effort must be made to relieve the extended condition of the bank, which should be accomplished in large measure by the payment of a liberal portion of the loans to directors and their interests. The liability of Director Parker's corporations and of Director Jelks, amounting to $167,159.71 and $137,506.32, must be very materially reduced and hereafter kept within more prudent limits.

The examiner has advised this office, in detail, of the transactions in connection with the bank's failure to credit promptly to correspondent banks checks drawn on them, and in holding in the cashier's desk checks of the First National Bank of Baltimore payable to the Assistant Treasurer of the United States at Baltimore. Such practices are particularly reprehensible and reflect severely upon the management. Such transactions must not be permitted or countenanced, and the incorrect report of condition made to this office March

4 last borders closely upon a violation of the criminal statute.

It is expected that every effort will now be made to relieve the situation as promised in your letters. Aside from the action already taken by the directors looking toward that end such additional steps must be taken as will permanently prevent a recurrence of such a condition as now exists.

All matters subject to criticism brought to
929 your attention by the examiner must be speedily corrected and the assets of the bank placed in a safe and bankable condition with as little delay as possible. Another examination of the bank will be made in the near future to ascertain the progress made in this respect.

No further dividends should be declared until the bank's condition is very materially improved.

It is reported to this office that Director Jelks was asked by the bank to carry a $15,000 deposit in return for his loans; that he, not having the money, gave his notes, which the bank accepted, but did not give Mr. Jelks credit for them in any way; and that the bank did, however, use the notes as collateral, sending them as security for bills payable. This transaction must be run through the books at once, in order that any liability which attached to the bank be clearly indicated. Advice of the action taken in this regard is also requested. Your attention is invited to this connection to Section 5209, U. S. R. S., which imposes a severe penalty for any falsification of the books of the banks and failure to enter a transaction on the books is as much a falsification as a false entry.

Respectfully,

T. P. KANE,
Deputy Comptroller."

(Answer).

"The Commercial National Bank.

Macon, Ga., July 1, 1914.

Hon T. P. Kane,
Deputy Comptroller of the Currency,
Washington, D. C.

Sir:

The Board of Directors of the Commercial National Bank of Macon were today informed of your communication of June 29th, and in response thereto have been immediately called together to fully consider
930 and make reply concerning all the matters mentioned by you.

In view of all the circumstances and considering the fact that the bank was overloaned, it has been impossible for us as yet to affect any reduction in the amount of borrowed money. We have reason to believe that this amount will be brought within legal requirements at an early time, when we will, of course, advise you, our bills payable being now $160,000.00 and rediscount $204,086.15.

With respect to the liability of Director Parker's companies, which at the date of last examination amounted to $167.159.71, we respectfully advise that at the close of to-day's business this amount stands at $166,988.50. We have assurence from Mr. Parker that this amount will be materially reduced in the next fifteen days without the necessity of this bank selling its securities in order to accomplish this result. We recognize this amount as being excessive and are bringing

every pressure to bear upon Mr. Parker to affect the reduction without too great a sacrifice of the securities which we hold.

With reference to the liability of director E. N. Jelks, we respectfully advise that we have credited to his account, not subject to check, but as security to any indebtedness with us, his notes amounting to $15,000.00 which he had heretofore given, but if which the bank made no entry, as reported to your examiner. The credit of these notes leaves his indebtedness today at $142,-291.58, which, as you will see, is a reduction of $10,-000.00, and we expect this amount to be still further reduced each week. We are satisfied that with a short time his total indebtedness will be substantially reduced.

With reference to the failure to credit checks promptly to correspondent banks, we respectfully advise that our finance committee and officers promptly issued instructions conforming to the ideas of yourself and your examiner and we are sure these have been and will be carried out.

Regarding balance on account of transfers of funds of the Treasurer of the United States, we respectfully advise that we will in future eliminate the de-
931 lays in connection with this.

We will make every effort to correct all matters subject to criticism brought to our attention by your Examiner.

With reference to your instructions that no further dividends shall be declared until the bank's condition was very materially improved, we respectfully advise that they will be adhered to.

Assuring you not only of the willingness but of the earnest desire of the officers and directors of this bank

and directors of this bank to conduct its affairs in complete accord with your wishes, we are,

Very respectfully,

Signed: E. Y. MALLARY,
E. D. HUGUENIN,
F. C. RIES,
J. J. COBB,
CECIL MORGAN,
LEON S. DURE,
A. W. LANE,
OSCAR BRADLEY,
E. M. JELKS,
C. M. ADAMS,
E. N. LEWIS."

The minutes of the directors' meeting of the Commercial National Bank—the date does not seem to appear on the minutes but the meeting at which the minutes of June the 9th were read and approved, and to which is attached a report of the finance committee of the Commercial National Bank, signed by W. T. Anderson and Leon S. Dure, dated July 14th, 1914, the minutes and reports are as follows:

"The Commercial National Bank.

Macon, Ga.

At the regular monthly meeting of the directors of the Commercial National Bank of Macon, the following were present, E. Y. Mallary, Cecil Morgan, A. W. Lane, F. C. Ries, E. L. Smith, Oscar Bradley, W. T. Anderson, T. C. Parker, J. J. Cobb, E. N. Lewis and Leon S. Dure.

Minutes of meeting held June 9, 1914, were read and approved.

On motion the attached report of the finance committee was ordered incorporated in the minutes
932 and the loans made approved. It was stated that the cash in vault was not verified during the month as usual by a director on account this having been done by the national bank examiner on his recent examination of the bank. After discussion meeting adjourned.

E. N. LEWIS, Cashier.

(Report Finance Committee).

Macon, July 14, 1914.

Board Directors,
Commercial National Bank,
Macon, Ga.

Gentlemen:

Your Finance Committee begs to report that since the Bank Examiner, Mr. Higgins, was here, we have made diligent effort to correct the deficiencies about what he complained. The progress with the three excessive lines has not been satisfactory. We refer to the interests of F. L. Mallary, E. N. Jelks, and T. C. Parker.

Mr. Parker has made many efforts to get relief asked for, but has so far been unsuccessful. We feel that his loans are safe, but the bank needs the money, and although it is unpleasant for us as your representatives to press him to a sacrifice of any of his collaterals, yet we feel impelled by a sense of absolute duty, and shall continue on this course until relief is obtained.

The same is true of Mr. Jelks. We have asked Mr. Jelks for a full statement of his business and property, in order that we may decide as to whether or not this is amply secured. So far we have not obtained state-

ment. He has paid a small amount on his indebtedness, about $17,000.

Mr. F. L. Mallary has been asked for statements of the business handled by him, but these have not yet been furnished. We shall keep after them for the same purpose as outlined in reference to the Jelks loan.

The Bank is in need of $100,000 to make it above criticism. Its borrowed money is in excess of
933 the amount permitted by about $60,000. Its cash on hand is within the limit but too low to be allowed to stand this way. We feel that the Hundred Thousand must be forthcoming, and shall leave no stone unturned to accomplish this.

We are taking up the criticisms of the Examiner one by one, and putting everything in shape according to the suggestions made by him. We have secured mortgages, indorsements and collaterals where these were desirable, and getting statements from the various business which have large lines with the bank.

We have made very few loans, and then only in small amounts. These will be found approved on the regular book for this purpose. The renewals we are having listed on a separate book, so that our work may be checked separately and apart at any time.

We have asked the officers to check up the lines accorded to each firm or individual, and secure additional deposits where the same are not in accordance with the line of accommodation extended.

We recommend that the directors bestir themselves to secure for the bank any additional business . It is our opinion that depositors are safe beyond any doubt, and there should, therefore, not be any hesitancy on the part of the Directors in soliciting business, and placing whatever they can with the bank. We expect to continue our diligence toward overcoming every point of

criticism and putting the bank at the head of the list—it shall be done.

Very truly yours,

W. T. ANDERSON,
LEON S. DURE."

The minutes of the meeting of the Board of Directors of the Commercial National Bank of November 12, 1914, just as they appear in the Minutes Book, are as follows:

"Pursuant to a call for a meeting of the Directors of the Commercial National Bank, signed by L. O. Benton, R. L. Smith, Oscar Bradley and F. C. Ries, which is attached hereto, Vice-President J. J. Cobb, called a meeting, giving notice to each Director either in person or by phone, to be held at the Commercial Bank Building at 12 o'clock noon on November 12, 1914. Those reporting present were: J. J. Cobb, L. O. Benton, F. C. Ries, and R. L. Smith, and there was, therefore, no quorum present.

934

It was requested that the calling of this meeting be inserted in the Minute Book as a protest of the four directors who signed against the action of the Board on November 10th, in allowing attorney's fees.

Mr. Benton also desired incorporated in the Minutes that Mr. A. W. Lane stated at the meeting held November 10th that the directors would incur no personal liability in the allowing of the attorney's fees referred to in the Minutes of that meeting.

Mr. Benton also requested that there be inserted in the Minutes the attached proposed resolution which it was his intention to offer had there been a quorum present."

(Proposed Motion of L. O. Benton Referred to Above)

'I move that a committee of three be appointed for the purpose of conferring with the Government Officials to ascertain whether any officer of the bank has been guilty of any criminal offense in connection with the affairs of the bank, and for the further purpose of soliciting subscriptions among the stockholders to aid in the prosecution of said officers in the event it shall be found that any of such officers are probably guilty of any criminal offense.

L. O. BENTON, Director.'

(Call for Above Meeting).

'Macon, Ga., November 11, 1914.

Mr. E. Y. Mallary, President,
Commercial National Bank,
Macon, Ga.

Dear Sir:

We, the undersigned directors, hereby request
935 you to call a meeting at once of the Board of Directors of said Bank for the purpose of reconsidering and rescinding the action of said Board on the 10th day of November, 1914, in passing and allowing to Jordan & Lane, attorneys, and Hardeman, Jones. Park & Johnston, Attorneys, attorney's fees in defending the case of A. H. Birdsey vs. Commercial National Bank, and Patterson & Payne vs said Bank. We consider said action illegal, improvident, and ill advised, and desire in proper meeting of said Board of Directors to cast our votes against same.

(Signed) L. O. BENTON,
R. L. SMITH,
OSCAR BRADLEY,
F. C. RIES.

(Copy Protest).

'Macon, Ga., November 11, 1914.

To the Board of Directors of the Commercial National Bank, Macon, Ga.:

Dear Sir:

As a director I wish to enter my protest against the following loans, made without my authority, knowledge, or consent, to-wit:

(Here follows a list of 56 names, concerns, companies and corporations, with the amounts of loans opposite them, ranging in amount from $1,500.00 to $75,000).

and any other papers which may be recovered which is later found to be put through in the Mallary-Jelks-Parker-Lewis-Eagle River Mining clique.

Yours very truly,

L. O. BENTON."

From the Minutes of the Directors' Meeting of the Commercial National Bank, held July 9, 1912, I want to offer these two motions:

"On motion, the offer of the Security Investment Company of $65,000.00 for the Bank's Building was declined.

936

"On motion, it was ordered that the Building be carried on the books of the Bank at the price offered by the Security Investment Company. (Signed) E. N. Lewis, Secretary, E. Y. Mallary, President."

I also offer from the Minutes of August 12, 1913, this resolution:

"On motion of Mr. Dure the following resolution was adopted:

Resolved: That the bank building and lot in Macon, Georgia, known as the Commercial Bank Building, located in the Triangle Block between Cotton Avenue and Second Street, be, and is hereby sold to the Commercial Realty Co., a firm composed of Jas. J. Cobb, and E. N. Lewis, for the sum of Eighty Thousand Dollars, of which sum Thirty Thousand dollars shall be on time secured by a security deed to said property, and that the President, E. Y. Mallary, be and is hereby authorized to execute and deliver to said Commercial Realty Co. a good and sufficient deed conveying said property. The President is hereby authorized to make such transfer of the $30,000. note and security as he may see fit.

(Signed) E. Y. MALLARY, President,
E. N. LEWIS, Cashier."

937 In order to complete the record as far as possible today an abstract is offered of conveyances made by the Commercial National Bank after August 1, 1914, there being twenty-five deeds abstracted, and similar abstract of conveyances made to the Commercial National Bank after August 1, 1914, there being five of these conveyances, and an abstract of suits filed by or against the Commercial National after August 1, 1914, being ten suits against the Bank, and five suits in favor of the Bank, also an abstract of bankruptcy cases filed in which the Commercial National Bank appears as a petitioning creditor—one of these, J. H. Virgin, filed August 21, 1914, the petition being verified by E. M. Lewis, Cashier; and against the Mallary Mill Supply Company, in which the Commercial National appears as a petitioning creditor, November 14, 1914, verified by J. J. Cobb, Vice-President. The abstract does not show who the attorneys were. We

also want to offer a list of bankruptcy cases in which claims were proven by the Commercial National Bank, there being in all eight different bankruptcies, and claims aggregating $269,784.39.

Defendant states as follows:

(The putting in the records of these abstracts in their present condition is conditioned on some other facts that we may want to put in).

Abstract of Conveyances made by Commercial National Bank of Macon, after August 1, 1914:

The Commercial National Bank, by E. Y. Mallary, President; E. N. Lewis, Cashier, (Corporate Seal)
To
The American National Bank of Macon.

Warranty Deed. Recorded in Clerk's Office Bibb Superior Court Book 194, page 503, date 7/13/14. Consideration $75,000.00.
Description of Property Conveyed:
Part lot 1, Square 21, Triangle Block, Commercial Bank Building.

938 Commercial National Bank, by J. J. Cobb, Vice-president, attest, E. N. Lewis, Cashier, (seal) to S. C. Moore. Quit Claim Deed. Conveys, Lot 1, Block 11, Napier Heights. Recorded in Clerk's Office, Bibb Superior Court, Book 192., Page 491, date 8, 1914. Consideration, $5.00.

Commercial National Bank, by J. J. Cobb, Vice-President, (Corporate Seal), to E. B. Codington.

Quit Claim deed. Conveys, Lot 3, 5, 12, Square 6, Eastview subdivision Kelly Property, East Macon District. Recorded Clerk's Office, Bibb Superior Court, Book 192, Page 544, date 10-21-14. Consideration. $115.00.

Commercial National Bank, by E. Y. Mallary, President, attest E. N. Lewis, Cashier, (Seal). To American National Bank. Warranty Deed. Conveys, Lots 141, 241, 244, 262, and eastern part of 222 (4th District), Plat Book 83, p. 8. Recorded in Clerk's Office Bibb Superior Court, Book 204, page 33, date 12-22-14. Consideration $7500.00.

Commercial National Bank, by E. Y. Mallary, President, attest, E. N. Lewis, Cashier, (Seal). To American National Bank. Warranty Deed. Conveys, lots 3, Block 17; 1, Block 11, 4, Block 15, Napier Heights, except that part of lot 1, block 11, conveyed to Roy I. Neal. Recorded in Clerk's Office Bibb Superior Court, Book 204, page 34, date 12-23-14. Consideration $1885.00.

Commercial National Bank by J. J. Cobb, Vice-President, R. S. Souder, Asst. Cashier, to Robert F. Hunter. Warranty Deed. Conveys 44 acres of lot 211 in 13th District. Recorded in Clerk's Office Bibb Superior Court, Book 209, page 1; date 1-2-15. Consideration, $1700.00.

939 Commercial National Bank by E. Y. Mallary, President; by R. C. Souder, Asst. Cashier, (Seal) to J. Mountford, Jr. Quit Claim Deed. Conveys, Lot 2, subdivision lot 3, Block 17, and lots 1, 2, and 3, subdivision lot 4, Block 15, Napier Heights. Recorded in Clerk's Office, Bibb Superior Court, Book 192, page 619, date 2-18-1915. Consideration $1000.00.

Commercial National Bank, by J. J. Cobb, Vice-President. (seal) To S. C. Moore.

Quit Claim Deed. Conveys 50 feet Forsyth Street by 138 feet Boundary Street, Vineville. Recorded in Clerk's Office Bibb Superior Court, Book 192, page 647; date 11-25-1914. Consideration $5.00.

Commercial National Bank, by J. J. Cobb, President, (corporate seal), to Miles F. Holt.

Release. Conveys: part of lot 2, Block 2, Crump's Park. Recorded in Clerk's Office Bibb Superior Court, Book 208, page 349. Date 4-6-1915. Consideration, Value received.

Commercial National Bank, by J. J. Cobb, Vice-President; attest R. C. Souder, Asst. Cashier (seal) to Miles F. Holt. Warranty Deed. Conveys, Part of lot 2, Crump's Park Place. Recorded Clerk's Office Bibb Superior Court, Book 204, page 46; date 4-6-1915. Consideration $2050.00.

Commercial National Bank by J. J. Cobb, Vice-President, R. C. Souder, Asst. Cashier, to Cook Clayton.

Release. Conveys, Lot 3, Block C. Clisby Place, Vineville. Recorded Clerk's Office Bibb Superior Court, Book 209, page 237; date 5-7-1915. Consideration: Value received.

Commercial National Bank, by J. J. Cobb, v. Pres., R. C. Souder, Asst. Cashier (seal), to J. M. Pitts.

Pierce Ay. Vineville Lot No. 22, Block No. 1, Hines Terrace, Pierce Ave., Vineville Ave. Recorded Clerk's Office Bibb Sup. Court, Book 200, p. 295, date 5-15-1915; consideration, $5500.00.

940 Commercial National Bank by J. J. Cobb, Vice-President, attest R. C. Souder, A. Cashier, (seal) To William Lowe. Warranty Deed; conveys, Lot 5, Square 1, subdivision of Block 43, Woolfolk, East Macon, Fort Hill Street.

Recorded Clerk's Office Bibb Superior Court. Book 204, page 53; date 5-25-1915; consideration, Prem. Recit. & $1.00.

Commercial National Bank, by J. J. Cobb, Vice-President; attest R. C. Souder, Asst. Cashier (Corporate Seal) To J. R. Odom and S. E. Odom.

Quit Claim Deed; conveys, Part of lots 10 and 11 of the subdivision of C. H. Rogers Home Place, Vineville, Rogers Ave. Recorded Clerk's Office Bibb Superior Court. Book 209, page 496; date 8-5-1915. Consideration $1.00.

Capital Savings Bank, by Chas. H. Cone, Vice-President; Commercial National Bank, by J. J. Cobb, Vice-President; attest R. C. Souder, Asst. Cashier; The American National Bank of Macon, by E. C. Scott, Cashier, to A. C. Tharpe. Quit Claim Deed. Conveys; Lot 9, 10, 11, 12, 23, 24, 25 and 26, Industrial Heights, subdivision lot 152, Vineville, District, (4th Land District). Recorded Clerk's Office Bibb Superior Court, Book 192, page 768. Date 8-1915, consideration $1.00.

Commercial National Bank by J. J. Cobb, Vice-President; attest R. C. Souder, Asst. Cashier, To Mary Eliza Taylor. Release. Releases: Lot 11 and part of lot 12, Block 2, Ward's addition, Vineville. Recorded, Clerk's Office Bibb Superior Court, Book 208, page 580; date 8-28-1915. Consideration, Value Received.

941 Commercial National Bank, by E. Y. Mallary, President, attest E. N. Lewis, Cashier (no seal) To American National Bank. Warranty Deed. Conveys, Lot 4, Block 2, Lot 13, Block 2; lot 4, Block 3; lots 1, 4, 8, 11, 13, 16, 2 and 15, Block 4, Subdivision of Ousley Property, in Lots 337 and 351, 13th District. Recorded Clerk's Office Bibb Superior Court, Book 204, page 66; date, 10-12-1915. Consideration, $6,400.00.

Commercial National Bank, by J. J. Cobb, Vice-President; attest, R. C. Souder, A. Cashier, (Corporate Seal), To Will Rushin. Warranty Deed. Conveys, Lot 10 Means Subdivision Woolfolk Property, East Macon.
Recorded in Clerk's Office, Bibb Superior Court, Book 204, page 76; date 2-4-1916. Consideration, $550.00.

Commercial National Bank by E. Y. Mallary, Pres., attest E. N. Lewis, Cashier. (Seal). To Richmond Moore. Warranty Deed; conveys, Lot 1, Block D. Industrial Heights Property, Vineville District, in Lot 152, 4th Land District. Recorded, Clerk's Office Bibb Superior Court, Book 212, page 84, date 3-22-1916. Consideration, $10.00, and other Val. con.

Commercial National Bank, by E. Y. Mallary, Pres., attest, R. C. Souder, Cashier, To Marshall J. Ellis. Warranty Deed. Conveys, Lot 14, Block A, Buford Place. Recorded, Clerk's Office, Bibb Superior Court, Book 212, page 100; date, 5-22-1916. Consideration, $25.00.

Commercial National Bank, by J. J. Cobb, Vice-President; attest, R. C. Souder, A. Cashier, to Ida T. Moore.

Warranty Deed, conveys, Lot on 2nd Avenue, Pleasant Hill, Vineville Recorded, Clerk's Office, Bibb Superior Court, Book 212, page 112; date 2-3 1916; consideration, $10.00, and other valuable consideration.

942 Commercial National Bank, by E. Y. Mallary, Pres., attest, E. N. Lewis, Cashier, To Henry G. Tucker. Warranty Deed. Conveys, Part of lots 9 and 10, subdivision C. H. Rogers Home Place, Rogers Ave., Vineville. Recorded, Clerk's Office, Bibb Superior Court, Book 218, page 643; date, 6-14-1916. Consideration $4500.00.

Commercial National Bank, by E. Y. Mallary, Pres.-E. N. Lewis, Cashier (Corporate Seal) To American National Bank. Warranty Deed. Conveys, Part lot 1, Block 5, Northwest Commons, Emmett Small Place, College Street. Recorded, Clerk's Office, Bibb Superior Court, Book 394, page 104; date 7-10-1916. Consideration, $10,000.00.

Commercial National Bank, by E. Y. Mallary, Pres., E. N. Lewis, Cashier (Corporate Seal) to American National Bank. Warranty Deed. Conveys, Part lot 1, Square 21, Triangle Block, Commercial Bank Building. Recorded, Clerk's Office Bibb Superior Court, Book 204, page 105; date, 7-10-1916. Consideration, $40,-000.00.

Commercial National Bank, by J. J. Cobb, Vice-President; attest R. C. Souder, Asst. Cashier, (corporate seal) To American National Bank, Transfer. Deed to secure debt from E. H. Hyman to Capital Savings Bank, Feb. 21st, 1913; Book 189, page 292. Recorded, Clerk's Office, Bibb Superior Court, Book 224, page 508; date 2-21-1918. Consideration Value received.

Commercial National Bank, by E. Y. Mallary, Pres., attest, E. N. Lewis, Cashier. To American National Bank. Quit Claim Deed. Conveys, Part of 2 acre lot 8, Northwest Range, Corner Orange Street and Washington Avenue. Recorded, Clerk's Office Bibb Superior Court, Book 229, page 474; date 11-9-1918. Consideration, $1.00.

943 Abstract of Conveyances made to Commercial National Bank of Macon, after August 1st, 1914.

The Security Investment Company, by T. C. Parker, Pres., attest, Barnett, Secty. to Commercial National Bank. Deed with covenant of title but no warranty. Conveys. Part of Ousley Property, consisting of part of original land lots Nos. 337 and 351, 13th Dist., Bibb County, Recorded Clerk's Office Bibb Superior Court, Book 204, page 28, Consideration, $5,000.00, date 10-24-1914.

C. W. Rice to Commercial National Bank. Warranty Deed. Conveys, All that tract of land 13th Dist., Bibb County, being South half of lot 211, formerly known as Academy Place or as Jerre W. May Place. Recorded in Book 200, page 174; date, 11/18/1914. Consideration not given.

H. A. Bankston, to Commercial National Bank. Warranty Deed. Conveys, Lot No. 9 and portion of lot No. 10, Rogers property. Recorded, in Clerk's Office Bibb Superior Court, Book 194, page 774; date 12/21/1914; consideration $5,110.61.

W. E. Small to Commercial National Bank. Warranty Deed. Conveys, Lot 1, Block 5, N. W. Common,

on College Street, Recorded, in Book 209, page 456; date, 3/11/1915; consideration $12,500.00.

J. R. Odom and S. E. Odom, to Commercial National Bank. Quit Claim Deed. Conveys part of Lot No. 10 of subdivision of Rogers property. Recorded Book 209, page 505; consideration $1.00. Date 8/5/1915.

944 Law Offices.
Hardeman, Jones, Park & Johnston.

Macon, Georgia, August 13, 1919.

Mr. J. W. Talbert,
Savannah, Ga.

Dear Mr. Talbert:

We enclose herewith an additional abstract showing a number of deeds to secure debt in favor of the Commercial National Bank, after August 1, 1914. Please insert this along with the other abstracts of conveyances to and from the bank.

We have given a copy to Mr. J. E. Hall, and he consents that it may be included in the record with the same right to make additions that he reserved when the others were offered.

Yours very truly,
HARDEMAN, JONES, PARK &
JOHNSTON,
By ORVILLE A. PARK.

P. S. I have talked with Mr. Talley, and he authorizes the incorporation of this abstract in the record along with the others, just as though it had been offered at the same time.

Note: Four abstracts were inclosed with above letters, and are as follows:

W. J. Mountford, Jr., to Commercial National Bank. Deed with Power of Sale. Conveys, Lots 2 and 4, subdivision of lot 1, Block No. 11, etc. Recorded Clerk's Office, Bibb Superior Court, Book 208, page 289, Consideration, $3,000.00, date 2/18/1915.

E. B. Codington to Commercial National Bank, D. P. S. Conveys Lots Nos. 3, 4, 5 and 12, in sq. No. 6, East Macon, etc. Recorded in Clerk's Office Bibb Superior Court, Book 201, page 473. Consideration $250.00. Date 10/1/1914.

945 Capital Savings Bank, by Chas. H. Cone, V-Pres., attest, W. H. Cone, Cashr., to Commercial National Bank, D. P. S. conveys, Lots No. 5, in subdivision of blocks Nos. 8 and 9 of Crump's Park, etc. American National Bank given first lien on same property under same date to secure $14,502.00. Recorded, in Book 202, page 482, Consideration $7,500.00. Date, 5/12/1915.

A. C. Tharpe, to Commercial National Bank; D. P. S. conveys lots Nos. 9, 10, 11, 12, 23, 24, 25, and 26, of Industrial Heights Property, Vineville District. Recorded in Clerk's Office, Bibb Superior Court, Book 215, page 48, consideration $416.00. Date, 8/25/1915.

Abstract of Suits Filed by or Against Commercial National Bank after August 1, 1914.

No. 39. November Term, 1914, Bibb Superior Court. A. H. Birdsey vs. Commercial National Bank, et al. Petition for Receiver. Dismissed Nov. 3, 1915.

No. 58. July Term, 1915. Bibb Superior Court. Sarah Edna Irvine (Adams), vs. Commercial National Bank. Complaint.
Dismissed April 5, 1917.

No. 16. November Term, 1916. Bibb Superior Court. Commercial National Bank vs. Herbert F. Haley, et al. Injunction, etc.
Judgment.

No. 50, April Term, 1917, Bibb Superior Court. W. T. Anderson vs. Commercial National Bank, et al. Complaint.

946 No. 52, April Term, 1917, Bibb Superior Court. Leon S. Dure vs. Commercial National Bank, et al. Injunction.

No. 13, July Term, 1917, Bibb Superior Court, L. O. Benton vs. Commercial National Bank, et al.
Complaint.

No. 71, February Term, 1918, Bibb Superior Court. John J. McKay vs. Commercial National Bank, et al. Complaint.

No. 133, July Term, 1919, Bibb Superior Court. W. E. Small vs. Commercial National Bank. Complaint.

No. 7198, December Term, 1914, City Court of Macon. Commmercial National Bank vs. E. H. Holland. Complaint on Note.
Dismissed February 25, 1915.

No. 7251, December Term, 1914, City Court of Macon, Commercial National Bank vs. H. A. Bankston. Complaint on Notes. Dismissed, December 22, 1914.

No. 7072, September Term, 1914, City Court of Macon. Commercial National Bank vs. Mrs. Margaret M. Long and F. E. Long. Complaint on Note. Judgment, September 26, 1914.

No. 7177, December Term, 1914, City Court of Macon. Commercial National Bank vs. Herbert F. Haley. Complaint on Note. Judgment June 11, 1915.

No. 7671. December Term, 1915, City Court of Macon. W. N. Hart vs. Commercial National Bank. Complaint.

947 No. ..... United States District Court. Western Division, Southern District of Georgia. In Equity. Albert Lamar Patterson and J. W. Payne vs. Commercial National Bank, and its Directors, and the members of its Stockholders' Committee, and of a special committee of stockholders. Bill for Injunction and Receiver. Filed, Nov. 3rd, 1914.

948 Bankruptcy Cases Filed by Commercial National Bank as Creditor or in which said Bank Filed Proofs of Claim in its own Name, all in the Western Division of the Southern District of Georgia, after August 1st, 1914.

J. H. Virgin. Involuntary petition. Filed by Commercial National Bank, et al., Petitioning creditors, August 21, 1914. Petition verified by E. N. Lewis, Cashier. Unsecured claim for $8987.94 proved by Commercial National Bank September 24, 1914. Intervention filed on claim secured by mortgage for $7500.00. Intervention verified by E. N. Lewis, Cashier.

Mallary Mill Supply Company. Involuntary petition. Filed by Commercial National Bank, et al., Petitioning creditors. Filed November 14, 1914. Petition verified by J. J. Cobb, Vice-President. Unsecured claim for $5894.28 proved by Commercial National Bank, December 4, 1914.

E. N. Jelks. Claim for $93,217.19. Proved by Commercial National Bank, September 5th, 1914.

T. C. Parker. Two Claims for $36,456.04 and $46,-710.61. Proved by Commercial National Bank January 28, 1915.

W. H. Roper. Two claims for $11,075.00 and for $4738.64, filed by Commercial National Bank December 1, 1914.

Renfroe Company. Claim for $6160.47 filed by Commercial National Bank September 5, 1914, and for $16,-259.10 filed September 11, 1914.

Farrish Brick Company. Claim for $19,008.99 filed by Commercial National Bank March 26, 1915.

Parker Quarries Company. Two claims for $7800.00 and $5976.13, filed by Commercial National Bank December 19, 1914.

949 Georgia, Bibb County.

This Contract made and entered into this the 24th day of October, 1914, between the Commercial National Bank of Macon, Georgia, hereinafter referred to as "the Bank" the Central Trust Company, hereinafter referred to as "the Central Trust Company", T.

C. Parker, and the Continental Trust Company, hereinafter referred to as "the Continental Company" all of said State and County:

Witnesseth, That for the consideration hereinafter set out, as well as in consideration of One ($1.00) Dollar in hand paid by the Central Company to the other parties thereto, receipt of which is hereby acknowledged, it is agreed as follows:

1.

(a) The Bank hereby transfers, sells, assigns and delivers, but without recourse, to the Central Company the following notes held and owned by said the Bank, all signed by the Security Investment Company, and aggregating the sum of $32,450.00 principal, to-wit:

| | | |
|---|---|---|
| Note due August 2, 1914, payable to T. C. Parker, for ..... | $10,000.00 | Prin. |
| Note due August 2, 1914, payable to T. C. Parker for ..... | 5,000.00 | Prin. |
| Note due August 2, 1914, payable to T. C. Parker for ..... | 5,000.00 | Prin. |
| Note due September 30, 1914, payable to the Bank for ..... | 450.00 | Prin. |
| Note due October 1, 1914, payable to the Bank for ..... | 12,000.00 | Prin. |
| Total ..... | $32,450.00 | Prin. |

950 (b) Said the Bank also transfers, sells, assigns and delivers, but without recourse, to the Central Company the full issue of $100,000.00 principal of Security Investment Company bonds, said

bonds being secured by a mortgage on certain realty therein described, recorded in the office of the Clerk of Bibb Superior Court in Book 196, page 394, and being held by said the Bank as collateral security for the payment of the notes just above described, as well as of certain notes and obligations of said Security Investment Company to said the Central Company.

(c) Said Bank also hereby relinquishes all other claims of every kind and character that it holds against the Security Investment Comapny, either as original undertaker or as security, indorser, grantor or otherwise.

2.

(a) The Central Trust Company hereby transfers, sells, assigns and delivers, but without recourse, to said the Bank, certain notes aggregating $51,832.99, to-wit:

| | | |
|---|---|---|
| Note of Beechwood Farms Company, due October 14, 1914, for ..... | $898.84 | Prin. |
| Note of Beechwood Farms Company, due October 17, 1914, for ..... | 8320.00 | Prin. |
| Note of Beechwood Farms Company, due October 19, 1914, for ..... | 2178.26 | Prin. |
| Note of Beechwood Farms Company, due October 20, 1914, for ..... | 3500.00 | Prin. |
| Note of Beechwood Farms Company, due October 20, 1914, for ..... | 4000.00 | Prin. |
| Note of Beechwood Farms Company, due October 27, 1914, for ..... | 5000.00 | Prin. |
| Total ..... | $23897.10 | Prin. |

951

| | | |
|---|---|---|
| Note of Southern Turpentine Company, due June 2, 1914, for ..... | $1566.88 | Prin. |
| Note of Southern Turpentine Company, due June 2, 1914, for ..... | 7500.00 | Prin. |
| Note of Southern Turpentine Company, due July 6, 1914, for ..... | 2000.00 | Prin. |
| Note of Southern Turpentine Company, due July 6th, 1914, for the principay sum of $8313.33 less a credit thereon of $2453.15, leaving a balance of ..... | 5761.18 | Prin. |
| Note of Parker Quarries Company, due on demand, for ..... | 1250.00 | Prin. |
| Note of Parrish Brick Company, due July 17th, 1914, for ..... | 527.00 | Prin. |
| Note of T. C. Parker, due on demand, for ..... | 960.00 | Prin. |
| Note of T. C. Parker, due September 23, 1914, for the principal sum of $7203.60, less a credit thereon of $1,278.72, leaving a balance of ..... | 5924.88 | Prin. |
| Note of T. C. Parker, due October 26, 1914, for ..... | 2466.15 | Prin. |
| Total ..... | $27955.89 | Prin. |
| Grand Total ..... | $51832.99 | Prin. |

(b) Said Central Company also transfers, sells, assigns and delivers, but without recourse, to said the Bank, the following securities held by said the Central Company as collateral upon the above mentioned notes, to-wit:

Note of Parker Quarries Company, due November 2nd, 1914, for $7500 principal;

84 shares of the capital stock of Ragland Brick Company;

27 shares of the capital stock of Beechwood Farms Company;

100 shares of the capital stock of Standard
952 Turpentine & Wood Pulp Company;

6 shares of the capital stock of J. L. Jessup Trust Company;

15 shares of the capital stock of Georgia Life Insurance Company;

61 Bonds of the Southern Turpentine Company, for the principal sum of $30,500.00 held by the Central Company as collateral security for the indebtedness of said Southern Turpentine Company to it and hereby transferred:

Also, all of the interest of the Central Company in the entire issue of $150,00.00 principal of the bonds of the Beechwood Farms Company, the said bonds being collateral security for the payment of the indebtedness of said Beechwood Farms Company to said Central Company and hereby transferred, as well as for the payment of the indebtedness of said Beechwood Farms Company to said the Bank.

(c) Said Central Company also hereby transfers, sells, assigns and delivers, but without recourse, to said the Bank, the following notes, to-wit:

Note of Florida Coca Cola Bottling Company payable to Central Trust Company, due August 6, 1914, for ..... $5000.00 Prin.

Note of Georgia Pulp & Paper Manufacturing Company, payable to Central Trust Company due November 4, 1914, indorsed by T. C. Parker, John T. Moore, and Thos N. Baker, for ..... 3934.14 Prin.

(d) Said Central Company relinquishes all other claims which it now holds or owns against T. C. Parker as original undertaker, or as security, indorser, guarantor or otherwise, or against any of the following named corporations or companies, to-wit:

953 Beechwood Farms Company,
Florida Coca Cola Bottling Company,
Jacksonville Coca Cola Bottling Company,
Parker Quarries Company,
Parrish Brick Company,
Parker-Brooks Construction Company,
Parker Tie Company,
Lake Jackson Lumber Company,
Parker Railway News Company,
Standard Turpentine & Wood Pulp Company,
Southern Turpentine Company,
Empire Chemical Company,
Patsitiga Sand Company,
Parker Hotel Company,
Georgia Pulp & Paper Manufacturing Company.

as original undertakers or as security, indorser, guarantor, or otherwise, respectively.

And the said Central Company agrees that should any of the obligations of said Parker or of any of said corporations and companies in this paragraph named

now owned by it, be hereafter found, that said Central Company will and does hereby release the said Parker and the said above-named corporations and companies from any and all liability upon said obligations.

(e) Said Central Company, having herein in paragraph 2, (a), transferred to said the Bank the following notes, to-wit:

| | | |
|---|---|---|
| Note of Southern Turpentine Company, due June 2, 1914, for ..... | $1566.68 | Prin. |
| Note of Southern Turpentine Company, due June 2, 1914, for ..... (with note of Parker Quarries Company attached for the same amount). | 7500.00 | Prin. |
| Note of Southern Turpentine Company, due July 6th, 1914, for ..... | 2000.00 | Prin. |
| Notes of Southern Turpentine Company, due July 8, 1914, showing balance due of ..... | 5761.18 | Prin. |

All of said Southern Turpentine notes being secured by Southern Turpentine bonds to the amount
954 of $30,500.00;

| | | |
|---|---|---|
| Note of Parker Quarries Company due on demand, for ..... | $1250.00 | Prin. |
| Note of Parrish Brick Company, due on July 17, 1914, for ..... | 527.00 | Prin. |
| Note of T. C. Parker, due on demand, for ..... | 960.00 | Prin. |
| Note of T. C. Parker, due September 23, 1914, on which there is a balance due, for ..... | 5924.88 | Prin. |

with the following collaterals attached:

84 shares Ragland Brick Company Stock.
6 shares J. J. Jessup Trust Company Stock.
27 shares Beechwood Farms Company Stock.
100 shares Standard Turpentine & Wood Pulp Co. Stock.
15 Shares Georgia Life Insurance Company Stock.

Note of T. C. Parker, due October 26, 1914, for $2,466.15, also secured by said 15 shares Georgia Life Insurance Company stock;

Said Central Company hereby guarantees the amount of $4400.00 can be collected out of the above mentioned notes and the collateral securing the same.

(f) Said Central Company assumes the payment of whatever may be found to be owing by the Security Investment Company on the following claims, to-wit:

Taxes due State and County.
Claim of Mitchell & Strozier amounting to $96.70.
Claim of G. W. Collins amounting to $45.00.
Note in favor of Mercer University secured by deed recorded in Book 172, page 139.
Note in favor of Miss Ida L. Holt, secured by deed recorded in Book 189, page 248;
Note in favor of J. A. Brooks, secured by deed recorded in Book 172, page 737;
Note in favor of Wesleyan Female College, signed by H. K. Burns, and securer by deed recorded in Book 196, page 127; and said Central Company agrees to indemnify and hold harmless the said H. K. Burns, against any liability on account of the signing of him of said note;

955 Certain notes in favor of Calvert Mortgage Company, signed by T. M. Wheeless and George S. Derry, respectively, and secured by deeds recorded in Book 196, page 140, and Book 196, page 142; and said the Central Company likewise agrees to indemnify and hold harmless the said Wheeless and the said Derry from any liability by reason of the signing by them respectively of said notes.

Claim of W. J. Marshall Company for lumber, etc., $528.76.

Claim of Shaw Brothers Company for Lumber, etc., $361.28.

Claim of Miller Brothers, for plumbing, etc., $178.75.

Claim of E. N. Jelks for brick, etc., $33.50.

Note held by Fourth National Bank of Macon, signed by S. W. Irvine, for stone, etc., $275.00.

Claim of Miller Brothers for sewers, etc., $219.77.

Claim of Fleming Company, for advertising, $54.00.

Claim of Macon News for advertising, $7.40.

Claim of Mallary Mill Supply Company, for hardware, etc., $59.08.

(g) Said Central Company further agrees that as soon as it comes into possession of the $100,000.00 of bonds issued by the Security Investment Company and the notes of said Security Investment Company held by the Bank and amounting to $32,450.00 principal, secured by said bonds and hereinbefore described as being transferred to said Central Company, that said Central Company will deliver said bonds and said the Bank's notes, as well as the notes given by said Security Investment Company to the Central Company, and secured, together with said the Bank's notes hereinabove described, by said Security Investment Company bonds, to the Continental Company as Trustee, to hold the same

to the following uses and trusts and with the following powers namely: To hold said bonds and said notes as security for the payment on or before three years from the 1st of October, 1914;

956 First: To the payment of the following notes and obligations pro rata and without preference one over another, to-wit:

| | | |
|---|---|---|
| Note signed by the Central Company, payable to ths Bank, of even date herewith, bearing 6% interest from date, for ..... | $1861.01 | Prin. |
| Note signed by the Central Company, payable to Commercial & Savings Bank, of even date herewith, bearing 6% interest from date, for | 7000.00 | Prin. |
| Note signed by the Central Company, payable to Fourth National Bank of Macon, Georgia, of even date date herewith, bearing 6% interest from date, for ..... | 5000.00 | Prin. |
| Note signed by the Central Company, payable to Barnett National Bank of Jacksonville, Florida, of even even date herewith, bearing 6% interest from date, for ..... | 5000.00 | Prin. |
| Note signed by the Central Company, payable to Hamilton National Bank of Chattanooga, Tenn. of even date herewith, bearing 6% interest, from date ..... | 5000.00 | Prin. |

| | | |
|---|---|---|
| Note signed by Florida Coca Cola Bottling Company, payable to T. C. Parker, and by him indorsed to the bank and under this transfer and assignment the property of said Bank, due on the 6th day of August, 1914, bearing interest at 8% per annum from May 8, 1914, for ..... | 5000.00 | Prin. |
| Note signed by the Georgia Pulp & Paper Manufacturing Company, payable to the Central Company, and by it indorsed to the Bank, which under this transfer is now the holder and owner thereof, due November, 1914, bearing 8% interest from June 4, 1914, for ..... | 3834.14 | Prin. |
| The guarantee hereinabove mentioned of the Central Company that ..... | 4000.00 | Prin. |

can be collected from the notes and collaterals described in Paragraph 2 (e) of this contract.

957 Second. After the payment in full of the above described notes and guarantee, then said Continental Company shall hold said bonds and said Security Investment Company notes secured thereby as security for the payment of a certain note from the Central Company, payable to the Bank, of even date herewith, due on the 1st day of April, 1915, and bearing interest at the rate of 4% per annum from August 1, 1914, and being for the principal amount of $35,000.00.

Third. For its services as Trustee said Continental Company shall be paid by said The Central Company the sum of $100.00 per annum until the obligations herein described and secured by the deposit of said bonds and the notes thereby secured shall be fully discharged.

(h) It is understood and agreed that the Central Company shall have the option of renewing all of the above mentioned notes which are signed by the Central Company and which mature on the 1st day of April, 1915, from time to time, as it may desire such renewals not to extend beyond three years from the 1st day of October, 1914.

(i) If the Florida Coca Cola Bottling Company note hereinabove described or the Georgia Pulp & Paper Manufacturing Company note hereinabove described to the above described $4400.00 guaranty should be paid to the Bank out of any proceeds arising from the security placed in the hands of the Continental Company by the Central Company, and if afterwards the Bank shall receive from the parties originally liable therefor the whole or any part of said notes or of the notes or of the notes covered by said $4400.00 guaranty, then and in that event so much as may be so, collected from the parties originally liable therefor shall be refunded to the Central Company to the extent of the amount paid out of the proceeds arising from said security.

(j) Said Central Company shall have such use, possession and control of the said $100,000.00 bond
958 issue and the mortgage or trust deed securing the same and the obligations secured by said bonds, as may be necessary or appropriate to enable said Central Company to sue said Security Investment

Company notes, take judgment thereon, to sell said bonds or the property described in said mortgage, or to foreclose the mortgage securing said bonds.

(k) If the Central Company should become the owner of the property covered by the mortgage securing the said Security Investment Company bonds, then it shall have the option to execute and deliver to said Continental Company, Trustee as aforesaid, a security deed or trust deed covering all of the lands embraced in said Security Investment Company bond mortgages, which is recorded in the office of the Clerk of Bibb Superior Court in Book 196, page 294. Such Security deed or trust deed shall put the title into the Continental Company as Trustee as aforesaid, as security for the payment of the notes and guarantee described in Paragraph 2 (g) of this contract, and in the same manner and to the same extent as said notes and said guaranty are secured under this contract by the deposit with said Continental Company of the bonds and obligations of the Security Investment Company.

(l) Should said Central Company become the owner of all the stock of the Security Investment Company, or the owner of the property covered by said bond mortgage, or otherwise in a position so to do, it shall have the right, by and with the consent and approval of the Continental Company, to sell any of the lots therein described at such prices and on such terms as said Central Company and said Continental Company shall consider available; and said Continental Company as Trustee as aforesaid shall from time to time quit claim any lots or lot so sold by the Central Company, on request of said Central Company; and upon delivery to said Continental of such portion

of the proceeds of said sales as may be agreed upon between the Central Company and the Continental Company, the Continental Company shall immediately upon receipt of such proceeds of the sale of any lot sold for cash and upon collection of any notes given
959 for the purchase of money which may have been delivered to said Continental Company as aforesaid, credit such amounts on the notes and obligations described in paragraph 2 (g) of this contract, and according to the terms and provisions of said paragraph.

3.

(a) Said T. C. Parker hereby transfers, sells, and assigns and delivers, but without recourse, to the Central Company, the notes described in a certain bond for title from the Security Investment Company to H. E. Lowe, dated March 1, 1914, being: One for $850.00 due October 1, 1914; one for $1000.00 due on or before October 1, 1914, which last note is given with the understanding that payment may be demanded in electrical materials, etc., said notes being a part of the purchase price of lots 4 and 5, block 7, Ingleside, and certain unascertained payments have been made on said note for $1000.00 principal.

(b) Said Parker hereby transfers, sells and assigns to the Central Company, but without recourse, the entire issue of the capital stock of the Security Investment Company, it being understood that 200 shares of said stock held by the Guaranty Trust Company of New York and 120 shares thereof held by the Fourth National Bank of Macon, Georgia, and 50 shares thereof held by the Exchange Bank of Savannah, Georgia, have been deposited with said respective institutions as collateral

security; and this transfer as to said stock is made subject to all the rights of said collateral holders. But as soon as said stock can be released from said collateral holders, the same shall be delivered to the Central Company.

In witness whereof, the parties hereto have hereunto set their hands and seals and delivered these presents in quadruplicate, the day and year first above written.

COMMERCIAL NATIONAL BANK OF MACON, GA., (L. S.)
By J. J. COBB, Vice-President.

960 Attest:
E. N. LEWIS, Cashier.
CENTRAL TRUST COMPANY, (L. S.)
By W. T. ANDERSON, President.

Attest:
W. R. WOODWARD, Secretary.
T. C. Parker. (L. S.)
CONTINENTAL TRUST COMPANY,
By B. P. O'NEAL, Vice-President. (L. S.)

Attest:
W. R. ROGERS, JR., Secretary.

Signed, sealed and delivered in presence of:
.....

The Fourth National Bank of Macon, Georgia, hereby agrees to the foregoing contract insofar as it is affected thereby.

FOURTH NATIONAL BANK,
By CHAS. B. LEWIS, Vice-President.

Attest:
F. E. WILLIAMS, Cashier.

The Barnett National Bank of Jacksonville, Fla., agrees to the foregoing contract insofar as it is affected thereby.

BARNETT NATIONAL BANK OF
JACKSONVILLE, FLA.,
By F. ADAMS, President.

Attest:
C. S. L'ENGLE, Asst. Cashier.

The Hamilton National Bank of Chattanoga, Tenn., hereby agrees to the foregoing contract insofar as it is affected thereby.

HAMILTON NATIONAL BANK OF
CHATTANOOGA, TENN.
By C. M. PRESTON, Cashier, President.

Attest:
....., Cashier.

We agree to the foregoing with the exceptions stated in our letter attached.

961 The Commercial & Savings Bank of Macon, Georgia, hereby agrees to the following contract insofar as it is affected thereby.

COMMERCIAL & SAVINGS BANK OF
MACON, GA.,
By E. N. JELKS, Vice-President.

Attest:
E. N.. LEWIS, Asst. Cashier.

The Barnett National Bank is requested to sign this agreement.

FLORIDA COCA COLA BOTTLING COMPANY,
By GEORGE B. JONES, Pres.
JACKSONVILLE COCA COLA BOTTLING CO.,
By GEO. S. JONES, Prest.

962 State of Georgia, County of Bibb.

This Contract and Agreement, made and entered into this the 31st day of August, 1914, by and between T. C. Parker, of said State and County, hereinafter referred to as Parker, of the First Part, the Commercial National Bank of Macon, a National Banking Association, the American National Bank of Macon, also a National Banking Association, as liquidating agent of the said Commercial National Bank, Fourth National Bank of Macon, a National Banking Association, Central Trust Company, a Georgia corporation, Commercial & Savings Bank, a Georgia corporation, and Continental Trust Co., a Ga. corporation, as liquidating agent of the said Commercial & Savings Bank, all of said corporations being hereinafter referred to collectively as the Banks, of the Second Part, and George S. Jones, of said State and County, as Trustee, hereinafter referred to as the Trustee, of the Third Part, Witnesseth:

That whereas, the said Parker is the owner of a controlling interest in a number of corporations hereinafter mentioned and of a large interest in divers other corporations also hereinafter mentioned, and holds the notes of some of said corporations for indebtedness of said corporations to him, and is likewise indebted to

some of said corporations, which hold his notes representing said indebtedness, the affairs of said corporations and of the said Parker being intimately connected, and it being desirable and for the best interest of said corporations that they should be managed and controlled with a view to their common interest; and

Whereas, said several corporations are largely indebted to the Banks, respectively, and the said Parker, is also indebted to said Banks, as well as to other creditors, both on his personal obligations and as indorser or guarantor of said corporations, or some of them; and

Whereas, the said Parker, while solvent is unable at this time to finance said several corporations and to meet or properly provide for the indebtedness of said corporation as the same mature and his own obligations, and desires to liquidate indebtedness and to dispose of his interest in said corporations for the benefit of his creditors and in order to save the equity on his
963 several properties for his own benefit; and

Whereas, the Banks and other creditors of the said Parker severally hold the stocks of said corporations and the bonded or other obligations of said corporations as collateral security for various indebtedness, and as the holders of such collateral are authorized to sell and dispose of the collaterals so held; and

Whereas, such sales made by the holders of said collaterals would be disastrous to the said several corporations and to the interest of the said Parker therein, and would not realize a proper amount for the assets of the said Parker;

Now, therefore, in consideration of the premises and of the sum of Five Dollars ($5.00) cash in hand paid, to the said Parker by the said Trustee, the receipt whereof is hereby acknowledged, and for the better securing of the indebtedness of the said Parker and of the said corporations in which he is interested to the said Banks, the said Parker hereby sells, assigns, transfers, conveys, and sets over to the said Trustee and his successors in trust, all of the stock held, owned or controlled by him in all the following named corporations, that is to say:

Florida Coca Cola Bottling Company,
Jacksonville Coca Cola Bottling Company,
Beechwood Farms Company,
Security Investment Company,
Parker Quarries Company,
Parrish Brick Company,
Parker-Brooks Constructions Company,
Parker Tie Company,
Lake Jackson Lumber Company,
(Parker Railway News Company,
Standard Turpentine & Wood Pulp Company,
Empire Chemical Company,
Eagle River Mining Company,
Shaw Brothers Company,
Georgia Kaolin Company,
Patsitiga Sand Company,
964 Central Trust Company,
Commercial National Bank,
Ragland Brick Company,
The J. W. Burke Company,
Parker Hotel Company,

and does hereby give to and vest in the said Trustee and his successors in trust full power and authority to have

the certificates of stock in said several Companies now standing in his name or standing in the name of any other person or corporation, but which is owned or controlled by him, transferred to the said Trustee, or to such person as may be designated and appointed by said Trustee; and the said Parker also sells, transfers, assigns and sets over to the said Trustee and his successors in trust, all notes, bills receivable, accounts, choses in action, and claims of every kind or character, held, owned or claimed by him against said several corporations, or any of them, and sells, transfers, assigns and conveys to the said Trustee and his successors in trust, all other property of every kind, character, nature or description, wherever situated, beionging to him, and any other interest, claim or demand, whether in law or in equity in and to any and all other property held or owned by him; and the said Parker contracts, agrees and obligates himself to execute and deliver to the said Trustee or his successors in trust such transfers, conveyances, assignments, or indorsements as may be necessary or proper to vest in the said Trustee the complete legal title and interest of the said Parker, in and to all and singular the stocks, notes, claims, and other property, real, personal or mixed, whenever requested so to do by the said Trustee, provided, nevertheless, that all of said property, rights and claims are transferred to the said Trustee in trust upon the following trusts, limitations, conditions and agreements, that is to say:

1: All of said property shall be transferred to and vested in the name of said Trustee, who shall take and hold the same with all of the rights therein
965 heretofore held, claimed or exercised by the said Parker, and proper corporate action shall be taken or secured by the several corporations so as to

vest in the said Trustee all of the powers of the said of the said Parker and so as to clothe the said trustee and all the corporations in which the said Parker owns the controlling interest with the full management of all the affairs thereof.

2: Said Trustee shall proceed forthwith to manage said corporation so as to liquidate their indebtedness and the indebtedness of the said Parker as speedily as it can be done without unnecessary sacrafice of the values of the properties so transferred, and to that in the said Trustee is hereby authorized to sell, transfer, assign, convey and deliver any and all of the property so transferred and conveyed to him in trust, either at public or private sale, and with or without advertisement, and either for cash or on credit, or in payment of the debts of other obligations of said corporation.

3: All of said properties are assigned and conveyed to the said Trustee subject to all liens, claims and charges thereon as the same may exist, and without changing in any manner affecting the rights, claims or interest of any of the creditors of said corporation or of the holders of their stock, securities or obligations, whether as collateral or otherwise, the said transfers being made subject to all the rights of the several creditors, in and to specific properties, securities or collateral.

4: The said Trustee shall have the right and power to borrow money from the purpose of liquidating any of the indebtedness of the said Parker or of the said several corporations, respectively, or to release any of the securities of the said Parker or said corporations, or to carry on the business of said corporations and to

pledge the property of said corporation, or other property held by him in trust, to secure the payment of the amounts so borrowed.

966 5: The said Trustee shall have the right, power and authority to carry on the business of any of said corporations until the same or their interest of the said Parker therein may be profitably disposed of, or to discontinue the operations of business of any of said corporations and to liquidate said corporations and dispose of its assets for the payment of its indebtedness or the indebtedness of the said Parker, and to employ and pay as a part of the expense of administration to be apportioned as his salary is apportioned, such employee as may be necessary.

6: As soon as all of the indebtedness of the said Parker and the said several corporations which he has a controlling interest to the Banks, respectfully, shall have been fully paid and liquidated, then the said Trustee shall forthwith reconvey and retransfer to the said Parker, or to such person, persons, or corporation that he may designate, all the stocks, securities, properties and equities therein as may remain on hand at that time, executing such transfers and conveyances as may be necessary to revest the title to said securities and other properties in said Parker, or such person as he may designate.

7. The Trustee shall act under the immediate direction and controlling of the following named committee, selected to represent the interest of the Bank, to-wit: R. J. Taylor, and Leon S. Dure, representing the Commercial National Bank and the American National Bank, as liquidating agent of said Commercial National

Bank, and representing also the Commercial & Savings Bank, and the Continental Trust Company, as liquidating agent of the said Commercial & Savings Bank, C. B. Lewis, as representing the Fourth National Bank, and R. L. Wilson, representing the Central Trust Company, or their respective successors chosen by said Banks, respectfully. Said Committee shall exercise a general oversight and supervision over the said Trustee, who shall confer with them in regard to the general conduct of the business of the trust committee
967 to him, and especially with regard to the sales of property, to continue the operation or the discontinuance of the business of the several corporations, the borrowing of money and the payment or other liquidation of the indebtedness of said corporations or of said Parker, with the right in said Committee should it see fit to do so, to remove the said Trustee and to appoint his sucessor.

8: In the event of the death, disability, resignation or removal of the said Trustee, the said Committee shall have the right to select and appoint his successor, who shall be clothed with all of the rights and powers of the said original Trustee.

9. The said Trustee shall be paid for his services out of the property and by the corporation whose stock shall be transferred to him, the same to be apportioned among said several corporations as a part of the expense of liquidation, a salary of ($1000.00) One Thousand Dollars per month for the first six months, the salary at the expiration of said six months to be fixed by the said Committee hereinbefore referred to and to depend upon the progress which shall have been made with the liquidation it being contemplated that the li-

quidation shall be completed as rapidly as possible, and it should be in large part completed during the first six months.

10: To represent the said Trustee in the administration of his said trust and in handling the legal work incident to liquidation herein contemplated, the firms of Hardeman, Jones, Park & Johnston, and Miller & Jones are hereby retained, and their fees for all services rendered and to be rendered until the completion of the liquidation and payment of the indebtedness to the Banks are hereby fixed at the sum of Fifteen Thousand Dollars ($15,000.00), the same to be taxed and paid in the same way that the salary of the trustee is paid, as hereinbefore provided.

11: In the event the indebtedness of the said Paker and of the several corporations, hereinabove referred to, to the said Banks, respectfully, shall be liquidated in full within three months from the date
968 hereof, the fees of the said attorneys shall be reduced to ($7,500.00) Seven Thousand Five Hundred Dollars and the salary herein provided to be paid to the Trustee shall immediately cease upon the full and final payment of said indebtedness to said Banks.

12: In addition to the salary of said Trustee and the fees of said attorneys, there shall be paid in the same way that said salary and fees are paid all the traveling expenses of said Trustee and attorneys when absent from the City of Macon on business of the trust.

13: The said Parker contracts, agrees, and obligates himself to assist and co-operate with the said Trustee and the said Committee in arriving at the true condition of all his business affairs, and the business and affairs of said several corporations and the transferring of all of the stocks, securities, notes and other properties to said Trustee and to such persons or corporations to whom the said Trustee may sell or otherwise dispose of the same or any part thereof, and in collecting any and all claims which may be due to the several corporations or to him, and in finding purchases for the various stocks, securities or properties belonging to him or to said several corporations, and in liquidating his indebtedness and the indebtedness of said several corporations, and in handling, managing and controlling the business and affairs of said Trust, so as to realize the greatest benefit therefrom, with the least complication, difficulty or trouble; and he further binds and obligates himself to execute from time to time any and all receipts, acquittances, transfers, deeds, assignments, powers of attorney, or other conveyances as may be necessary or proper in the administration of the said trust.

In witness whereof, the said T. C. Parker, Commercial National Bank, American National Bank of Macon, Fourth National Bank of Macon, Central Trust Company, Commercial & Savings Bank, Continental Trust Company, and George S. Jones, hereunto set their hands and caused their seals to be affixed and delivered these

presents in eight parts, the day and year first
969 above written.

T. C. PARKER. (L. S.)
COMMERCIAL NATIONAL BANK, (L. S.)
By E. N. LEWIS, Cashier.
AMERICAN NATIONAL BANK OF MACON, (L. S.)
By R. F. TAYLOR, President.

Attest:

E. C. SCOTT, Cashier, (Seal)
FOURTH NATIONAL BANK OF MACON, (L. S.)
By J. F. HEARD, President.

Attest:

F. E. WILLIAMS, Cashier. (Seal)
CENTRAL TRUST COMPANY,
By W. T. ANDERSON, President.

Attest:

W. R. WOODWARD, Sec. & Treas. (Seal)
COMMERCIAL & SAVINGS BANK, (L. S.)
By E. N. LEWIS, Asst. Cashier.
CONTINENTAL TRUST COMPANY, (L. S.)
By R. S. TAYLOR, President.

Attest:

W. R. ROGERS, JR., Secretary. (Seal)
GEO. S. JONES. (L. S.)

Signed, sealed and delivered in the presence of:
WARREN A. CAMERON,
(Seal) Notary Public, Bibb County, Ga.

Approved as correct, Mch. 21, 1921.
BEVERLY D. EVANS, U. S. Judge.

Filed March 23, 1921.
CECIL MORGAN, Deputy Clerk.

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970 PETITION FOR APPEAL, SUPERSEDEAS ORDER.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

American National Bank of Macon,
vs. In Equity No. 25.
Commercial National Bank of Macon, and Its Shareholders.

The defendants in the above named cause, to-wit: W. H. Hightower, B. A. Wright, Freeman J. Hart, C. H. Andrew, Alex Irwin, Mrs. Annie Inman, Jno. W. Grant, W. C. Winburn, Leon S. Dure, C. M. Adams, Guy Armstrong, R. E. Hightower, A. B. Hinkle, W. T. Anderson, N. Z. Anderson, A. J. Sams, R. W. Dickerson, Mary R. Huguenin, as Executrix, E. D. Hugenin, P. W. Pullin, Mrs. Rubie Stafford, Oscar Bradley, Kenneth W. Dunwoody, W. Elliott Dunwoody, W. E. Dunwoody, Evelyn W. Hubbell, Geo. W. Hubell, Macon Cooperage Company, R. C. Ries, Extr., W. T. Myers, W. A. McKenna, Atlantic National Fire Insurance Co., J. F. Lewis, Mrs. Lamar L. Oglesby, W. D. Wells, W. A. Rousch, W. A. Roush, Agt., W. A. Daniel; L. O. Benton & Bro., L. O. Benton,

and J. S. Malone, former stockholders of Southern Securities & Financing Co.; L. O. Benton, L. O. Benton & Bro., J. W. Rayne, Mrs. Bessie N. Proudfit, Extrx., Miss Meta Isabel Pace, Joel A. Smith, R. L. Smith, defendants in the above stated case, also A. M. Stewart, E. A. Middlebrook, J. S. Coon, and Ed. A. Sheridan, Mrs. Hattie J. Lane, Extrx., Will of A. W. Lane, conceiving themselves aggrieved by the decree made and entered on the 3rd day of September, 1920, in the above entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the assignment of errors herewith filed and they pray that this appeal may be allowed, and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

This 1st day of November, 1920.

CHAS. L. BARTLETT,
R. L. BERNER,
971 J. E. HALL,
WARREN GRICE,
CHAS. AKERMAN,
R. L. ANDERSON,
CHAS. J. BLOCH,
AUG. O. B. SPARKS,
Solicitors for Appellants.

The foregoing petition for appeal having this day been presented to the Court with an assignment of errors,

It is ordered, upon consideration thereof, that the appeal as prayed for be, and the same is, hereby al-

lowed, and upon each appellant giving bond, according to law, in the sum of the judgment entered against him together with two years interest and said bond shall operate as supersedeas bonds, and said decree as to said appellants shall be superceded pending said appeal; and the Clerk of this Court is ordered to send up a certified transcript of the record as required by law.

This 1st day of November, 1920.

BEVERLY D. EVANS,
U. S. Judge.

Filed Nov. 1st, 1920.

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972 ASSIGNMENT OF ERRORS.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

American National Bank of Macon,

vs. In Equity No. 25.

Commercial National Bank of Macon, and its Shareholders.

Now comes W. H. Hightower, B. A. Wright, Freeman J. Hart, C. H. Andrew, Alex Irwin, Mrs. Annie Inman Grant, Jno. W. Grant, W. C. Winburn, Leon S. Dure, C. M. Adams, Guy Armstrong, R. E. Hightower, A. B. Hinkle, W. T. Anderson, N. Z. Anderson, A. J. Sams, R. W. Dickerson, Mary R. Hugenin as Executrix E. D. Hugenin, P. W. Pullin, Mrs. Rubie

Stafford, Oscar Bradley, Kenneth W. Dunwoody, W. Eliott Dunwoody, W. E. Dunwoody, Evelyn W. Hubbell, Geo. W. Hubbell, Macon Cooperage Company, F. C. Ries, Extr., W. T. Myers, W. A. McKenna, Atlantic National Fire Insurance Co., J. F. Lewis, Mrs. Lamar L. Oglesby, W. D. Wells, W. A. Roush, W. A. Roush, Agt., W. A. Daniel; L. O. Benton & Bro., L. O. Benton, and J. S. Malone, Jr., former stockholders of Southern Securities & Financing Co.; L. O. Benton, L. O. Benton & Bro., J. W. Bayne, Mrs. Bessie N. Proudfit, Extrx., Miss Meta Isabel Pace, A. M. Stewart, R. L. Smith, J. S. Coon and Ed. A. Sheridan, Mrs. Hattie J. Lane, Extrx. of Will of A. W. Lane, E. A. Middlebrooks, Joel H. Smith and W. A. Little, defendants in the above stated case, by their solicitors, Chas. L. Bartlett, R. L. Berner, J. E. Hall, Warren Grice, Chas. Akerman, R. L. Anderson, Chas. J. Bloch and A. O. B. Sparks, and say that the decree entered in the said cause on the 23rd day of September, 1920, is erroneous and against the rights of these defendants for the following reasons:

973 1.

Appellants allege the Court erred in overruling the exceptions of the defendants and granting his final decree by which he awarded judgment against the several defendants for the full face value of the shares of stock owned by them, for the reason that the contract between the parties, whether construed alone or in connection with the evidence, established the fact that the plaintiff was a purchaser and not a creditor, and was, therefore, not entitled to enforce the statutory liability against these defendants.

2.

Because the Court erred in overruling and in not sustaining each and every one of the exceptions filed to the report of the Master in said cause, for the reason that all of defendants' exceptions taken as a whole, alleged error to the report of the Master as a whole, in that, the Master found that the contract between complainants and defendants, construed in connection with the circumstances in existence at the time the contract was entered into and the conduct of the parties thereunder, was a contract by which the assets of the Commercial Bank were transferred to the American Bank as security for a loan and advances to be made; whereas, these defendants contended in said exceptions and do now contend, that under said contract construed alone and under said contract construed in the light of the circumstances existing when the same was entered into and as evidenced by the conduct of the parties thereunder; the Master could only have found that the contract was one of purchase and sale, by the terms of which the American National Bank purchased all the assets of every kind and description of the Commercial Bank, including its good will. These defendants contended in all of said exceptions, and do now contend that on August 1, 1914, a practical consolidation was effected between the two banks and that the Commercial National Bank ceased to do a banking business on that date, and that accordingly
974 the relationship of debtor and creditor did not arise between the two said banks. Defendants contended in all said exceptions taken as a whole and do now contend that such a finding on the part of the Master was demanded by the evidence, as referred to in said exceptions, and that the finding of the Master,

as set out in his said report, was clearly contrary to the weight of the evidence, and that accordingly the Court erred in sustaining the report of the Master as a whole and overruling the said exceptions as a whole.

3.

Appellants allege the Court erred in overruling the exceptions of the defendants as a whole, for the reason, that said exceptions raised a distinct issue that plaintiff was a purchaser and not a creditor, and was, therefore, not authorized to institute and maintain this suit, and said contention was supported by the evidence, and not only authorized, but demanded a finding on this issue in favor of the defendants.

4.

These appellants allege, the Court erred in overruling exception No. 1, wherein these defendants excepted to the finding of the Master, wherein he states the contention of the defendants as follows:

"The defendants on the other hand contend, that, under the contract, the business of the Commercial National Bank was merged or consolidated with that of the American National Bank by a sale and transfer of its assets to the American National Bank, in consideration of the latter Bank assuming the payment of the liabilities of the Commercial National Bank, and the American, therefore, took the transferred assets as purchaser."

To this finding, the defendants excepted on the following grounds:

(A) Because this statement leaves out the most important element of the consideration, to-wit: that the American was to account to the stockholders of the Commercial Bank for any surplus, which may remain after paying the indebtedness of the Commercial in full and the expense of realizing on the assets so transferred; and (b) Because, this statement fails to state the contention of the defendants clearly in
975 this, that they insisted that under the contract, construed alone or in connection with the evidence, the transaction between the said Banks, was a sale, whereby the title to all the properties of the Commercial Bank passed to the American upon the delivery of the same to the American, on the 3rd day of August, 1914, subject to be divested on the happening of one or both of the following events—(a) The failure of the Commercial to institute proceedings to liquidate itself or the cessation of said proceedings or interference therewith, by litigation or otherwise; and (b) The failure of the Commercial to have the American appointed its liquidating agent, in which event the American was to hold the assets as security for such advances as might have been made by it in the meanwhile, and neither of these events having happened, the title remained absolutely vested.

The defendants insisted that the record and the evidence showed, that these were the contentions, were correct, and the Court erred in not sustaining them.

5.

Appellants allege, the Court erred in overruling exception No. 2, indicated in said exception as II, wherein the defendants excepted to the following of the Master:

"The true condition of the Bank was not, however, so good as indicated by the above statement, though in the estimation of its officers, it was amply solvent."

The defendants excepted to this finding on the ground, that the evidence not only established the fact that the Commercial was not only solvent, in the estimation of its officers, but that it was amply solvent in the estimation of the officers of the American Bank, and the Court erred in not so finding.

6.

Because the Court erred in overruling the third exception to the Master's report, indicated in said exceptions as III, wherein the said Master found "the subject of consolidation was at that time of secondary importance", (referring to the time of the original negotiations between the presidents of the two banks), whereas he should have found that the primary purpose of the officers of the Commercial in negotiating with the officers of the American was to effect a con-
976 solidation of the two banks by sale to the American of the assets of the Commercial, and that the Court erred in not sustaining the said exceptions upon the grounds therein specified; said finding of the Master being clearly contrary to the weight of the evidence.

7.

Because the Court erred in overruling the Fourth exception filed to the Master's report and designated in said exceptions as IV, and in not sustaining the same upon the grounds therein specified.

8.

Because the Master erred in not sustaining the second, fifth, sixth, forty-second, forty-third, forty-fourth, forty-seventh, and forty-eighth exceptions to the Master's report, designated in said exceptions as II, V, VI, XLII, XLIII, XLIV, XLVII, XLVIII, in each of which exceptions defendants excepted to the particular findings of the Master as severally set out in said exceptions and now assign error on the failure of the Court to sustain each and all of said exceptions construed together, wherein the Master found, in effect, that the relationship between the two banks arose by virtue of the fact that the Commercial Bank being in need of money, its officers went to the officers of the American Bank for the purpose of effecting a loan of money, that negotiations were thereupon entered into—the president of the American being anxious to obtain the deposits and valuable patronage of the Commercial and willing to make the loan upon satisfactory terms for the securing of his bank and provided he could obtain this patronage—and that pursuant to said original negotiations the American offered to make the loan provided so much of the assets of the Commercial were transferred to the American, as would in the estimation of its officers, be sufficient to protect and secure it for all amounts assumed. These appellants aver that the Master could only have found from the facts referred to in said exceptions, that the original negotiation between the officers of the two banks had only in contemplation the consolidation of said two banks
977 by the purchase of the assets of the Commercial by the American, that the terms upon which this was to be done were definitely outlined between Mr. Taylor and Mr. Mallory, that the Commer-

cial being then in need of money the American Directors offered to assume its liabilities provided the Commercial would transfer sufficient of its assets, in the estimation of its officers, to protect and secure it for all amounts assumed, and that in the estimation of the officers of the American all of the assets of the Commercial were necessary to be transferred and that carrying out said original negotiations for purchase and sale of assets and pursuant to the agreements between the officers of the two banks, a contract of purchase and sale was entered into and all of the assets of the Commercial were transferred to the American Bank in accordance therewith.

9.

Appellants allege, the Court erred in overruling exception No. 5 wherein the defendants excepted to the following finding of the Master:

"The Commercial was considered solvent by Mr. Taylor so far as creditors were concerned."

To this finding, the defendants excepted on the following grounds: (a) Because this finding did not correctly report the absolute beliefs and confidence of Mr. Taylor, after he and the other officers of the American had examined the Commercial's assets, for they found, after so doing, that the American was safe in its purchase and venture; and (b) Because, the finding was contrary to the evidence, in that it limited the confidence and belief of the President of the American, as to solvency of the Commercial Bank.

Appellants attached to this exception, references to the evidence to which they now refer and ask that the same be made a part of this assignment.

Appellants contend that this exception was sustained by the evidence, and the Court erred in not sustaining the same.

10.

Appellants allege, the Court erred in overruling exception No. 7, wherein defendants excepted to
978 the following finding of the Master:

"E. N. Lewis, Cashier of the Commercial National Bank, under date of August 3rd, 1914, wrote to the Comptroller as follows:"

To this finding the defendants excepted on the following grounds: (a) Because, there is no evidence that will support a finding that E. N. Lewis was Cashier of the Commercial National Bank on August 3, 1914; and (b) Because, said finding is contrary to the evi dence.

Defendants supported their exceptions by references to the evidence, which they now refer to and ask that the same be made a part of this assignment.

Appellants insist that said was supported by the evidence and the Court should have sustained the same, and the failure was error.

11.

Appellants allege, the Court erred in overruling exceptions No. 8, wherein the defendants excepted to the following finding of the Master:

"During banking hours on August 1, 1914, the Commercial National Bank conducted its banking business

as formerly, at its banking house, known as the Commercial National Bank Building, at the corner of Cotton Avenue and Second Street, Macon, Georgia..... At the close of business on that day, the Commercial National Bank ceased to do a banking business in that building."

To this finding, the defendant excepted, on the ground that, the Master should have found, under the evidence, that the Commercial National Bank ceased to do a banking business, altogether, after that day.

These appellants allege, that the Court erred in not sustaining this exception.

12.

Appellants allege, the Court erred in overruling exception No. 9, wherein the defendants excepted to the following finding of the Master:

"At the beginning of banking hours, on August 3rd, the persons named above as officers and employes of the Commercial National Bank, with the exception of E. Y. Mallory and J. J. Cobb, commenced their work in the space so set apart to them in the American Banking Room, and assumed immediate possession of cash receivables, books and records, which they, as officers and employees of the Commercial, had formerly had custody."

979 To this finding of the Master, the defendants excepted on the following grounds: (a) Because, there is no evidence to support a finding that these persons, on or after August 3, 1914, acted as officers or employees of the Commercial, or that they as-

sumed custody of the cash, receivables, books, and records, which had formerly been used by them or the Commercial; and (b) Because, there is no evidence to support such a finding.

Defendants referred to various portions of the evidence to support their exception, and these appellants refer to the same, and ask that they be made part of this assignment of error.

Appellants insist that this exception should have been sustained, and the Court erred in overruling the same

13.

Because the Court erred in overruling the tenth exception to the report of the Master, indicated in said exception as X, wherein the Master found:

"The case and cash items amounting to $30,668.78, and the receivables of the Commercial carried down to the American's Building on the morning of August 3rd, were not turned over to the officials of the American, or incorporated with the cash and receivables of the American, but retained in the custody of the Commercial's officers and employees who were occupying the space in the American Banking Room set apart for the use of the Commercial's officers and employees, heretofore named. The Commercial's employees continued to have custody of the cash and cash items of the Commercial until August 25th.....The receivables continued to be kept in the Commercial's pouch in the custody aforesaid until paid, or otherwise disposed of, except as they were taken out temporarily by L. P. Hillyer, Hansell Hillyer, or Karsten for collection."

Whereas the Master should have found, as demanded by the evidence that the cash and cash items at the Commercial though already transferred to the American and then under the control and custody of the officers of the American, were handled in part by former employees of the Commercial, acting under the direction and command of the American officers.

14.

Because the Master erred in not sustaining the seventh, ninth, eleventh, sixteenth, and seventeenth exceptions to the Master's report, designated in said exception as VII, IX, XI, XVI and XVII, in each of which said exceptions defendants excepted to particular
980 findings of the Master as severally set out in said exceptions and do now assign error to the decree of the Court in overruling the said exceptions construed together, for the reason that the Master holds, in effect, that the officers and employees of the Commercial National Bank, continued to act as such after August 3rd, 1914; whereas it is clearly indicated and demanded by the evidence that after August 3rd, 1914, the officers and employees of the Commercial no longer functioned as such, but that whatever part they took in the liquidation and winding up of the Commercial's affairs was done under the direction and control of the officers of the American Bank.

15.

Because the Court erred in overruling the eleventh exception filed to the Master's report and designated in said exception as XI, and in not sustaining the same upon the grounds therein specified.

16.

Because the Court erred in overruling the twelfth exception filed to the Master's report and designated in said exception as XII, and in not sustaining the same upon the grounds therein specified.

17.

Because the Court erred in overruling the thirteenth exception filed to the Master's report and designated in said exceptions as XIII, and in not sustaining the same upon the grounds therein specified.

18.

Because the Court erred in overruling the fourteenth exception filed to the Master's report and designated in said exception as XIV, and in not sustaining the same upon the grounds therein specified.

19.

Because the Court erred in overruling the sixteenth exception filed to the Master's report and designated in said exceptions as XVI, and in not sustaining the same upon the grounds therein specified.

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20.

Because the Court erred in overruling the eighteenth exception to the Master's report, designated in said exceptions as XVIII, and in not sustaining the same upon the grounds therein specified.

21.

Because the Court erred in overruling the nineteenth exception to the Master's report, designated in said exceptions as XIX, and in not sustaining the same upon the grounds therein specified.

22.

Because the Court erred in overruling the twentieth exception to the Master's report to the effect that the business of the Commercial was conducted at the American building in the usual and customary way in which it had been conducted at the Commercial's building. Whereas, the evidence demands a finding on the part of the Master to the effect that the Commercial National Bank ceased to do a banking business on August 1st, 1914, and that such business as was done in the name of the Commercial was conducted under the supervision and control of the American, and for the convenience of the American in handling and liquidating the affairs of the Commercial.

23.

Because the Master erred in not sustaining the eighth, thirteenth, fourteenth, fifteenth, eighteenth, nineteenth, twenty-fifth and twenty-sixth exceptions to the report of the Master designated in said exceptions as VIII, XIII, XIV, XV, XVIII, XIX, XXV, XXVI, in each of which said exceptions defendants excepted to some particular finding of the Master as severally set out in said exceptions, and do now assign error to the decree of the Court in overruling the said exceptions construed together, for the reason that the Master finds

in effect that after August 3, 1914, the Commercial National Bank was actively engaged in the banking business, whereas, these defendants aver that a finding to the effect, that the Commercial National Bank
982 ceased to do a banking business on August 3, 1914, went out of business on that date and thereafter transacted no business, having surrendered all of its property, assets and good will to the American, was demanded by the evidence and that the several findings of the Master as to particular acts and functions which were performed in the name of the Commercial Bank are clearly shown by all of the evidence to have been done for the American Bank and under the direction and control of the officers of the American Bank in its manipulation and liquidation of the affairs of the Commercial Bank.

24.

Because the Court erred in overruling the twenty-first exception to the Master's report, designated in said exceptions as XXI, and in not sustaining the same upon the grounds therein specified.

25.

Because the Court erred in overruling the twenty-third exception to the Master's report, designated in said exceptions as XXIII, and in not sustaining the same upon the grounds therein specified.

26.

Because the Court erred in overruling the twenty-fourth exception to the report of the Master, designated in said exceptions as XXIV, where in the Master found that:

"The account of the Commercial on the ledger of the American National Bank soon showed a balance due by the Commercial National Bank, representing the difference between the amounts deposited to the credit of the Commercial and the amounts advanced by the American to the Commercial, on its drafts, and charged to the Commercial."

Whereas a finding was demanded by the evidence to the effect that this account of the Commercial on the ledger of the American was but a memorandum account, the result of the system of bookkeeping decided upon in order to show the overplus that would be due the Commercial shareholders, if any, and that this overdraft did not represent a loan or amount due by the Commercial to the American, but was merely
983 the deficit resulting from the failure of the liquidation of the Commercial's assets to equal the payments made by the American on the purchase price of these assets.

27.

Because the Court erred in not sustaining the twenty-first,, twenty-second, twenty-third, forty-fifth and sixty-fifth exceptions to the report of the Master, designated in said exceptions as XXI, XXII, XXIII, XLV, LXV, wherein the Master holds in effect that the method of bookkeeping adopted, showed an overdraft against the Commercial in favor of the American and that his overdraft, in view of the method of the bookkeeping, indicated a debt due by the Commercial to the American; whereas, these defendants contended and do now contend that all the evidence as referred to in said exceptions clearly demands the finding on the

part of the Master to the effect that the method of bookkeeping adopted and used, was the simplest and most efficient method which could have been adopted under the contract of purchase and sale, whereby the American as purchaser was to account to the shareholders of the Commercial for any overplus realized on liquidation of its assets, and that this overdraft did not indicate a loan to the Commercial, but showed the deficit arising by failure of liquidation of assets to equal the purchase price contracted to be paid, that is, payment of all liabilities.

28.

Because the Court erred in overruling the twenty-fifth exception to the Master's report, designated in said exceptions as XXV, and in not sustaining the same upon the grounds therein specified.

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29.

Because the Court erred in overruling the twenty sixth exception to the Master's report, designated in said exceptions as XXVI, and in not sustaining the same upon the grounds therein specified.

30.

Because the Court erred in overruling the twenty-seventh exception to the Master's Report, designated in said exceptions as XXVII, and in not sustaining the same upon the grounds therein specified.

31.

Because the Court erred in overruling the twenty-eighth exception to the Master's report, designated in

said exceptions as XXVIII, and in not sustaining the same upon the grounds therein specified.

32.

Because the Court erred in overruling the twenty-ninth exception to the Master's report, designated in said exceptions as XXIX, and in not sustaining the same upon the grounds therein specified.

33.

Because the Court erred in overruling the thirtieth exception to the Master's report, designated in said exceptions as XXX, and in not sustaining the same upon the grounds therein specified.

34.

Because the Court erred in overruling the thirty-first exception to the Master's report, designated in said exceptions as XXXI, and in not sustaining the same upon the grounds therein specified.

35.

Because the Court erred in overruling the thirty-second exceptions to the Master's report, designated in said exceptions as XXXII, and in not sustaining the same upon the grounds therein specified.

985 36.

Because the Court erred in overruling the thirty-third exception to the Master's report, designated in

said exceptions as XXXIII, and in not sustaining the same upon the grounds therein specified.

37.

Because the Court erred in overruling the thirty-fourth exception to the Master's report, designated in said exceptions as XXXIV, and in not sustaining the same upon the ground therein specified.

38.

Because the Court erred in not sustaining and in overruling the thirty-fifth exception to the report of the Master, designated in said exceptions as XXXV, wherein the Master found that:

"I find from the evidence that the amount of the indebtedness of the Commercial National Bank to the American National Bank, including interest at 7% on average daily balances is the sum of Three Hundred and Fortynine Thousand, and Forty-seven Dollars and fifty-four cents ($349,047.54)."

Whereas, the finding was demanded by the Master that the amount of the deficit on liquidation of the assets of the Commercial was $349,047.54, and that this deficit did not represent or indicate a debt due by the Commercial to the American.

39.

Because the Court erred in overruling the thirty-sixth exception of the Master's report, designated in said ceptions as XXXVI, and in not sustaining the same upon the grounds therein specified.

40.

Because the Court erred in overruling the thirty-seventh exception to the Master's report, designated in said exceptions as XXXVII, and in not sustaining the same upon the grounds therein specified.

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41.

Because the Court erred in overruling the thirty-eighth exception to the Master's report, designated in said exceptions as XXXVIII, and in not sustaining the same upon the grounds therein specified.

42.

Because the Court erred in overruling the thirty-ninth exception to the Master's report, designated in said exceptions as XXXIX, and in not sustaining the same upon the grounds therein specified.

43.

Because the Court erred in overruling the fortieth exception to the Master's report, designated in said exceptions as XL, and in not sustaining the same upon the grounds therein specified.

44.

Because the Court erred in overruling the forty-first exception to the Master's report, desigated in said exceptions as XLI, and in not sustaining the same upon the grounds therein specified.

45.

Because the Court erred in overruling the forty-second exception to the Master's report, designated in said exceptions as XLII, and in not sustaining the same upon the grounds therein specified.

46.

Because the Court erred in overruling the forty-fifth exception to the Master's report, designated in said exceptions as XLV, and in not sustaining the same upon the grounds therein specified.

47.

Because the Court erred in overruling the forty-sixth exception to the Master's report, designated in
987 said exceptions as XLVI, and in not sustaining the same upon the grounds therein specified.

48.

Because the Court erred in overruling the forty-seventh exception to the Master's report, designated in said exception as XLVII, and in not sustaining the same upon the grounds therein specified.

49.

Because the Court erred in overruling the forty-eighth exception to the Master's report, designated in said exceptions as XLVIII, and in not sustaining the same upon the grounds therein specified.

50.

Because the Court erred in overruling the forty-ninth exception to the Master's report, designated in said exceptions as XLIX, and in not sustaining the same upon the grounds therein specified.

51.

Because the Court erred in overruling the fiftieth exception to the Master's report, designated in said exception as L, and in not sustaining the same upon the grounds therein specified.

52.

Because the Court erred in overruling the fifty-first exception to the Master's report, designated in said exceptions as LI, and in not sustaining the same upon the grounds therein specified.

53.

Because the Court erred in overruling the fifty-second exception to the Master's report, designated in said exceptions as LII, and in not sustaining the same upon the grounds therein specified.

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54.

Because the Court erred in overruling the fifty-third exception to the Master's report, designated in said exceptions as LIII, and in not sustaining the same upon the grounds therein specified.

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55.

Because the Court erred in overruling the fifty-third, fifty-fourth, fifty-fifth and fifty-sixth exceptions to the Master's report, and designated in said exceptions as LII, LIV, LV, and LVI, wherein the Master finds, in effect, that the American did not offer to accept all of the assets of the Commercial at the time of the transfer, as cash, but that under the third condition in the American's resolutions the assets would have been reduced to cash and applied in reduction of Commercial's liabilities and that under this third condition a time would come when all of the Commercial's assets were exhausted and that had they been insufficient to pay all these liabilities, the deficit representing the net amount advanced by the American would be a debt due by the Commercial. These defendants aver that a finding was demanded on the part of the Master by construing the resolutions in the light of the evidence, to the effect that the American offered to assume the liabilities of the Commercial by accepting a transfer of assets of the Commercial sufficient in amount, in the estimation of the American officers, to fully protect the American for all amounts so assumed; that in the estimation of the American's officers, a transfer of all of the assets of the Commercial as cash, was necessary to protect the American and that this transfer of assets was actually effected on August 3, 1914, and that the Court erred in not so ruling.

56.

Because the Court erred in overruling and in not sustaining the fifty-seventh exception to the report of the Master, designated in said exceptions as LVII, upon the grounds therein specified.

57.

Because the Court erred in overruling and in not sustaining the fifty-eighth exception to the report of the Master, designated in said exceptions as LVIII, upon the grounds therein specified.

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58.

Because the Court erred in overruling and in not sustaining the fifty-ninth exception to the report of the Master, designated in said exceptions as LIX, upon the grounds therein specified.

59.

Because the Court erred in not sustaining the sixtieth exception to the Report of the Master, designated in said exceptions as LX, where in the Master found in effect, that the only purpose to be served by the officers of the Commercial in transferring all of the Commercial's assets to the American was to effect a pledge. These defendants [illegible]ded and [illegible] now contend that the evidence demands a finding to the effect that the Commercial transferred all of its assets to the American as the first step in the performance of the agreement of sale for the purpose of practical consolidation.

60.

Because the Court erred in overruling and in not sustaining the sixty-first exception to the report of the Master, designated in said exceptions as LXI, upon the grounds therein specified.

61.

Because the Court erred in overruling and in not sustaining the sixty-second exception to the report of the Master designated in said exceptions as LXII, upon the grounds therein specified.

62.

Because the Court erred in overruling and in not sustaining the sixty-third exception to the report of the Master designated in said exceptions as LXIII, upon the grounds therein specified.

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said exceptions as LX, wherein the Master found in sustaining the sixty-fourth exception to the report of the Master designated in said exceptions as LXIV, upon the grounds therein specified.

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64.

Because the Court erred in overruling and in not sustaining the sixty-fifth exception to the report of the Master, designated in said exceptions as LXV, upon the grounds therein specified.

65.

Because the Court erred in overruling and in not sustaining the sixty-sixth exception to the report of the Master, designated in said exceptions as LXVI, upon the grounds therein specified.

66.

Because the Court erred in overruling and in not sustaining the sixty-seventh exception to the report of the Master, designated in said exceptions as LXVII, upon the grounds therein specified.

67.

Because the Court erred in overruling and in not sustaining the sixty-eighth exception to the report of the Master, designated in said exceptions as LXVIII, upon the grounds therein specified.

68.

Because the Court erred in overruling and in not sustaining the sixty-ninth exception to the report of the Master, deignated in said exceptions as LXIX, upon the grounds therein specified.

69.

Because the Court erred in overruling and in not sustaining the seventieth exception to the report of the Master, designated in said exceptions as LXX, upon the grounds therein specified.

70.

Because the Court erred in overruling and in not sustaining the seventy-second exception to the report of the Master, designated in said exceptions as LXXII, upon the grounds therein specified.

71.

Because the Court erred in overruling and in not sustaining the seventy-third exception to the
991 report of the Master, designated in said exceptions as LXIII, upon the grounds therein specified.

72.

Because the Court erred in overruling and in not sustaining the seventy-fourth exception to the report of the Master, designated in said exceptions as LXIV, upon the grounds therein specified.

73.

Because the Court erred in overruling and in not sustaining the seventy-fifth exception to the report of the Master, designated in said exceptions as LXV, upon the grounds therein specified.

74.

Because the Court erred in overruling and in not sustaining the seventy-sixth exception to the report of the Master, designated in said exceptions as LXVI, upon the grounds therein specified.

75.

Because the Court erred in overruling and in not sustaining the seventy-seventh exception to the report of the Master, designated in said exceptions as LXVII, upon the grounds therein specified.

76.

Because the Court erred in overruling and in not sustaining the seventy-eighth exception to the report of the Master, designated in said exceptions as LXVIII, upon the grounds therein specified.

77.

Because the Court erred in overruling the fifty-first, fifty-second, thirty-fourth, forty-ninth, fiftieth, forty-third, forty-fourth, seventy-first, forty-seventh, seventy-second, seventy- fourth and seventy-ninth exceptions, to the Master's report, designated in said exceptions as LI, LII, XXIV, XLIX, L, XLIII, XLIV, LXXI, XLVII, LXXII, LXXIV and LXXIX, in each of which exceptions defendants excepted to some particular finding of the Master, as severally set out in said
992 exceptions, and do now assign error to the decree of the Court in overruling the said exceptions construed together, for the reason that the Master finds in effect, that all of the assets of the Commercial National Bank were transferred to the American National Bank as security for a loan, whereas these appellants contended and do now contend that the contract between the two banks was a contract, which in view of the circumstances existing at the time same was entered into, and the evidence showing the conduct of the parties thereunder, demands a finding to the effect, that all of the assets of the Commercial National Bank were transferred to the American National Bank as cash, in accordance with the terms of the contract of purchase and sale and with the view of a practical consolidation of the two banks to be followed by a dejure liquidation and consolidation in accordance with the proper resolutions of its stockholders.

78.

Because the Court erred in overruling and in not sustaining the seventy-ninth exception to the report of the Master designated in said exceptions as LXXIX, upon the grounds therein specified.

79.

Because the Court erred in overruling and in not sustaining the eightieth exception to the report of the Master, designated in said exceptions as LXXX, upon the grounds therein specified.

80.

Because the Court erred in overruling and in not sustaining the eighty-first exception of the report of the Master, designated in said exceptions as LXXXI, upon the grounds therein specified.

81.

Because the Court erred in overruling and in not sustaining the fifty-eighth, forty-sixth, fifty-ninth, sixty-seventh, sixty-eighth, seventieth, seventy-eighth, eightieth, and eighty-first exceptions to the Master's report, designated in said exceptions as LVIII, XLVI, LIX, LXVII, LXVIII, LXX, LXXVIII, LXXX, and
993 LXXXI, in each of which said exceptions defendants excepted to some particular finding of the Master as severally set out in said exceptions and do now assign error to the decree of the Court in overruling the said exceptions construed together, for the reason that the Master finds in effect therein, that no consolidation of the two banks was contemplated in either the resolution of the American or the

resolution of the Commercial and that there was in fact no consolidation affected between the two banks. These defendants contended and do now contend that the evidence demands a finding to the effect that a practical consolidation was effected between the Commercial National Bank and the American National Bank on August 1, 1914; that the American National Bank took charge of all of the assets of the Commercial National Bank transferred to it in accordance with the terms of the contract of purchase and sale and began at once the liquidation of the same; that this practical consolidation had in view a consolidation and liquidation dejure after proper resolutions of the stock holders of the Commercial and that this consolidation affirmatively shows that there was a sale of the assets by the Commercial to the American in which no debt of any kind was created.

82.

Because the Court erred in overruling and in not sustaining the eighty-second exception to the report of the Master, designated in said exceptions as LXXXII, upon the grounds therein specified.

83.

Because the Court erred in overruling and in not sustaining the eighty-third exception to the report of the Master, designated in said exceptions as LXXXIII, upon the grounds, therein specified.

84.

Because the Court erred in overruling and in not sustaining the eighty-fourth exception to the report of

the Master, designated in said exceptions as LXXXIV, upon the grounds therein specified.

994 85.

Because the Court erred in overruling and in not sustaining the eighty-fifth exception to the report of the Master, designated in said exceptions as LXXXV, upon the grounds therein specified.

86.

Because the Court erred in overruling and in not sustaining the eighty-sixth exception to the report of the Master, designated in said exceptions as LXXXVI, upon the grounds therein specified.

87.

Because the Court erred in overruling and in not sustaining the eighty-seventh exception to the report of the Master, designated in said exceptions as LXXXVII, upon the grounds therein specified.

88.

Because the Court erred in overruling and in not sustaining the eighty-eighth exception to the report of the Master, designated in said exceptions as LXXXVIII, upon the grounds therein specified.

89.

Because the Court erred in overruling the eighty-ninth exception to the report of the Master, designated

in said exceptions as LXXXIX, wherein the Master holds that:

"The American National Bank, while the Commercial National Bank in the customary way was transacting banking institution, so made payments for it and at its instance or request that a claim or demand was created against the last named bank for which its shareholders are by the statutes made individually responsible to the extent of the amount of their stock."

Defendants aver that there was no evidence to support the conclusion that the Commercial National Bank was, at the time, as alleged in this finding of the Master, transacting business as an active banking business in the customary way, and being so, that the payments made for it by the American National Bank created such a liability as reidered the stockholders responsible to the extent of the amount of their stock; and further, that there is no evidence to sustain the finding, that the al-
995 leged payments, so made for the Commercial National Bank were made at its instance or request, but on the contrary, the evidence demands a finding to the effect that all such payments were made in pursuance of the agreements of the American National Bank to pay the indebtedness in full of the Commercial National Bank, in accordance with the contract, as a part of the purchase price of the assets and business of said Commercial Bank, and that the decree of the Court in not so holding was erroneous.

90.

Appellants allege that the Court erred in overruling the 96th exception of defendants filed to the finding of

the Master known in the record as conclusion of law No. 7, wherein he stated as follows:

"In carrying out the obligations of said agreement of contract, the American National Bank became indebted to the Commercial National Bank in the amount hereinafter stated. Such indebtedness is a contract engagement of the Commercial National Bank within the meaning of the Act of Congress imposed upon the shareholders of National Bank Associations' liability for the business contracts or engagements of such Associations."

These appellants allege that the Court erred in overruling this exception, that should have sustained the same for the reasons that the relation of debtor and creditor did not arise under the terms of the contract, between the two institutions, whether this contract is construed alone or in the light of the evidence presented to the Master. But, on the contrary, the contract construed alone, or in the light of the evidence, presented to the Master, establishes the fact that it was the intention of the parties of the contract to sell, convey, and deliver to the American as purchaser, all of the assets of the Commercial, and that the American accepted and took over the business of the Commercial, and possession of such assets absolutely as purchaser, and in so doing, absorbed every iota of property owned by the Commercial National Bank, and thereby placed the latter Bank in a position where the American could never have excepted it to pay a debt, and, therefore, to occupy the relation of debtor to the plaintiff; and
996 furthermore, that in addition to taking possession of every particle of the Commercial's property, of every kind and character, the contract entered

into between the two Banks, obligated the Commercial Bank to extinguish itself as a Bank Institution by liquidation of these assets, placing itself in a position where it was impossible for it to occupy the relation of debtor to the American Bank.

91.

Appellants allege that the Court erred in overruling exception 91, filed by the defendants, to the following finding of the Master:

"Issued Number 7 Main Case."

"Can the American Bank maintain this suit, or must it pay by reason of the liquidation of said Bank?"

My conclusion is, that the American National Bank can maintain this suit.

To this finding of the Master, defendants filed the following exception:

"The Master erred in so finding which was find to the defendants."

"The Master should have found that the American Bank could not have maintained this suit in this its own name, as its is now undertaking to do, that the evidence shows that the American was the liquidating agent of the Commercial, and that the American had sold its affairs to Joel Hert and his associates, and that Joel Hert at the time the suit was brought, had been appointed liquidating agent of the American, and that at the time the suit was brought and now the American was in process of liquidation itself, and that Joel Hert was its liquidating agent, and that by reasons of these

facts, under the law, the American could not maintain the suit."

These appellants allege that in overruling this exception, the Court committed error.

92.

Appellants allege the Court erred in overruling the exceptions as a whole for the reason, that even if it should be true that plaintiff advanced the monies to pay off the liabilities of the Commercial National Bank and the same was a debt, in the ordinary acceptation of the terms, still it was not such a contract, debt or engagement as the Commercial National Bank was at the time capable of creating so as to make the plaintiff a creditor authorized to enforce the statutory liability against the stockholders, under the pro-
997 visions of the Act of Congress.

Wherefore, defendants pray that the said decree be reversed and that said District Court for the Western Division of the Southern District of Georgia be ordered to enter a decree reversing the decision of the lower Court in said cause and to enter a decree in favor of these defendants:

CHAS. L. BARTLETT,
R. L. BERNER,
J. E. HALL,
WARREN GRICE,
CHAS. AKERMAN,
R. L. ANDERSON,
CHAS. J. BLOCH,
AUG. O. B. SPARKS,
Solicitors for Appellants.

HALL, GRICE & BLOCH.
Macon, Ga.
JORDAN & MORE,
Macon, Ga.
E. M. SMITH,
McDonough, Ga.
ROSER, SLATON, PHILLIPS & HOPKINS,
Atlanta, Ga.
R. L. BERNER,
Macon, Ga.
CHAS. L. BARTLETT,
Macon, Ga.
CHAS. AKERMAN,
Macon, Ga.
R. D. FEAGIN,
Macon, Ga.
RYALS & ANDERSON,
Macon, Ga.
W. A. DODSON,
Americus, Ga.
GREEN JOHNSON,
Monticello, Ga.
BROCK, SPARKS & RUSSELL,
Macon, Ga.
Of Counsel.

Assignment of Errors presented Nov. 1st, 1920.
BEVERLY D. EVANS,
U. S. Judge.

Filed Nov. 1st, 1920.

Bill to Enforce Shareholders' Liability.

998 American National Bank of Macon, Plaintiff,
vs. No. 25.
Commercial National Bank of Macon, and its Stockholders, Defendants.

Know all men by these presents: That we, W. H. Hightower, as principal, and R. E. Hightower, Jr., as surety, are held and firmly bound unto the American National Bank of Macon in the full and just sum of $600.00 dollars, to be paid to the said American National Bank of Macon, its certain attorneys, successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seal and dated this 29th day of October, 1920.

Whereas, lately at a District Court of the United States for the Western Division of the Southern District of Georgia, in a suit pending in said Court between the American National Bank of Macon, plaintiff, and Commercial National Bank of Macon and its Stockholders, defendants, a decree was rendered against the said W. H. Hightower, and the said W. H. Hightower having obtained an appeal and filed a copy thereof in the Clerk's Office of said Court, to reverse the decree in the aforesaid suit, and a citation directed to the said American National Bank of Macon, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the City of New Orleans, in said District, within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the said W. H. Hightower shall prosecute his appeal to effect and answer all damages and costs, if he fails to make his plea good, then the above obligation is to be void, else to remain in full force and virtue.

W. H. HIGHTOWER, (Seal)
R. E. HIGHTOWER, Jr., (Seal)
Security.

Attested by
(Seal) R. E. RUSHIN,
N. P. Upson County, Ga.

Approved by
BEVERLY D. EVANS,
U. S. Judge.

Filed Nov. 1, 1920.
J. C. MORCOCK, Deputy Clerk.

999 Georgia, Upson County.

Personally appeared R. E. Hightower, Jr., who on oath says that he signed the foregoing bond as surety, and that he, affiant, owns property over and above his debts, and over and above the amount of homestead and exemption allowed by law, of greater market value than the sum called for in the foregoing bond. He makes this affidavit in order to qualify as a surety on said bond in the appeal in the case therein mentioned.

R. E. HIGHTOWER, JR.

Sworn to and subscribed before me this 29th day of October, 1920.

R. E. RUSHIN,
(Seal) N. P. Upson Co., Ga.

1000 AGREEMENT OF COUNSEL.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

American National Bank,
vs. In Equity.
Commercial National Bank and its Shareholders.

For the purpose of perfecting the record and of shortening the record on appeal, it is agreed between counsel for the plaintiff and counsel for the several defendants in the above stated cases that:

1.

Counsel for the plaintiff having agreed that in the event L. O. Benton, L. O. Benton & Bro., and J. S. Malone, Jr., former stockholders in the Southern Securities and Financing Company, were made parties defendant, it should be understood that they adopted the answers of the other defendants, and that the case was to be decided as to them as though they had filed the same answers, and was so decided; it is hereby agreed that this be reduced to writing, made a part of the record in said case, and certified with this agreement by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals for the Fifth Circuit.

2.

Whereas, the defendants named in the petition for appeal have severally filed supersedeas bonds similar in form and which said bonds have each been approved

by the Judge of this Court both as to sufficiency and form and whereas, it is deemed unnecessary for all bonds and qualifying affidavits to be copied and certified to the Clerk of the Circuit Court of Appeals, it is therefore agreed:

(a) That the bond given by one of the defendants shall be certified to the Clerk of said Court and that in lieu of copying all of the other bonds and including them in the record, the names of the defendants giving bond and the amount of the bond given by each, and the fact that all of said bonds have been approved as
1001 above stated shall be set out in this agreement, and this agreement itself made a part of the record and certified to the Clerk of said Court.

(b) That the names of the defendants giving bond, and the amount of the bonds given by each, are as follows:

| | |
|---|---|
| Ed. A. Sheridan | $ 585.00 |
| Mrs. Hattie J. Lane, Extrx. Andrew J. Lane | 3500.00 |
| E. A. Middlebrooks | 250.00 |
| Joel A. Smith | 1200.00 |
| W. A. Little | 1800.00 |
| W. H. Hightower | 600.00 |
| J. S. Coon | 1800.00 |
| B. A. Wright | 5500.00 |
| J. Freeman Hart | 600.00 |
| C. H. Andrew | 925.00 |
| Alex Irwin | 2400.00 |
| Mrs. Annie Inman Grant | 3000.00 |
| Jno. W. Grant | 3000.00 |
| W. E. Windbun | 600.00 |

| | |
|---|---|
| Leon S. Dure | 5000.00 |
| C. M. Adams | 1200.00 |
| Guy Armstrong | 2500.00 |
| R. E. Hightower | 3500.00 |
| A. B. Hinkle | 1200.00 |
| W. T. Anderson | 8250.00 |
| N. L. Anderson | 4800.00 |
| A. J. Sams | 600.00 |
| R. W. Dickerson | 2000.00 |
| Mary R. Huguenin, as extrix. of E. D. Huguenin | 1250.00 |
| P. W. Pullen | 3500.00 |
| Mrs. Rubie Stafford | 1200.00 |
| Oscar Bradley | 2950.00 |
| Kenneth W. Dunwoody | 117.00 |
| W. Elliott Dunwoody, Jr. | 117.00 |
| W. E. Dunwoody | 936.00 |
| Evelyn W. Hubbel | 885.00 |
| Geo. W. Hubbel | 1170.00 |
| Macon Cooperage Co. | 117.00 |
| F. C. Ries, Jr., Executor of F. C. Ries, Sr. | 4095.00 |
| W. T. Myers | 1170.00 |
| W. A. McKenna | 234.00 |
| Atlantic Nat'l Fire Ins. Co. | 12700.00 |
| J. F. Lewis | 23400.00 |
| Mrs. Lamar Lewis Oglesby | 5850.00 |
| W. D. Wells | 117.00 |
| W. A. Roush | 1170.00 |
| W. A. Roush, Agt. | 1170.00 |
| L. O. Benton | 1200.00 |
| L. O. Benton & Bro., a partnership, composed of L. O. Benton and Eugene Benton | 5065.00 |
| J. S. Malone, Jr. | 1053.00 |

| | |
|---|---|
| L. O. Benton & Bro., a firm, composed of L. O. Benton and Eugene Benton, and Eugene Benton individually ..... | 12050.00 |
| Mrs. Bessie N. Proudfit, Executrix of A. Proudfit ..... | 1200.00 |
| A. M. Stewart ..... | 6000.00 |

1002 In witness whereof counsel for the plaintiff and counsel for the appellants have hereunto set their hands. This 17th day of November, 1920.

ORVILLE A. PARK,
Plaintiff's Solicitors.

C. L. BARTLETT,
R. L. BERNER,
J. E. HALL,
J. W. GRICE,
C. J. BLOCH,
R. L. ANDERSON,
CHAS. AKERMAN,
AUG. O. B. SPARKS,
Appellant's Solicitors.

Filed Nov. 20, 1920.

IRENE ELKINS,
Deputy Clerk.

1003 PRAECIPE.

In the District Court of the United States for the Western Division of the Southern District of Georgia.

American National Bank,
vs. In Equity.
Commercial National Bank and its Stockholders.

The Clerk will please make out a transcript of the following parts of the record in said case, and certify the same to the Clerk of the Circuit Court of Appeals for the Fifth Circuit, to-wit:

1.

The Original Bill of Complaint.

2.

The motions to dismiss the original Bill of Complaint filed by the following defendants:

(a) Commercial National Bank of Macon, and others by their solicitors, Jordan & Lane, and Hall and Grice.

(b) Oscar Bradley and others, by their solicitors, C. L. Bartlett, R. L. Berner, Greene F. Johnson and C. C. Huguley.

(c) John F. Lewis and others, by their solicitor, W. A. Dodson.

(d) Atlantic National Fire Insurance Company, by its solicitors, Ryals & Anderson and B. S. Deaver.

3.

The amendment to the original bill with all exhibits thereto and the order allowing the same.

4.

The motions to dismiss the bill as amended filed by the following:

(a) C. M. Adams, and others, by their solicitors, Hall & Grice, and Jordan & Lane.

(b) Oscar Bradley and others, by their solicitors, C. L. Bartlett, R. L. Berner and Greene F. Johnson.

5.

The opinion of the Court filed November 8th, 1917.

1004 6.

The supplemental opinion dated January 21st, 1918.

7.

The order and decree dismissing the bill, dated January 21st, 1918.

8.

The order making the mandate of the Circuit Court of Appeals the order of this Court.

9.

The answers filed by the following defendants:

(a) C. M. Adams, and others, through their solicitors, Hall & Grice, R. C. Jordan, E. M. Smith, Jno. M. Slaton, Minter Wimberly, Chas. Akerman, Jesse Harris, Feagin & Hancock, Ryals & Anderson, Will Gunn, C. L. Bartlett, R. L. Berner and Greene F. Johnson.

(b) A. M. Stewart, by his solicitor, L. M. Smith.

(c) J. F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. Chas. Thompson, by their solicitors, W. A. Dodson.

(d) The amended answer of J. F. Lewis, Mrs. Lamar Lewis Oglesby and Mrs. Chas. Thompson, by their solicitors, W. A. Dodson.

10.

The order referring the case to a **Master.**

11.

The Master's report.

12.

The exceptions filed by the defendants to the Master's report.

13.

The opinion of the Court overruling the exceptions to the Master's report.

14.

The final decree, dated September 3rd, 1920.

15.

The condensed statement of evidence and order approving same.

1005 16.

The petition for appeal and order allowing the same.

17.

The assignment of errors.

18.

The citation.

19.

The appeal bond of W. H. Hightower and the agreement between counsel relative to the appeal bonds of the other defendants.

20.

This praecipe.

C. L. BARTLETT,
WARREN GRICE,
J. E. HALL,
C. J. BLOCH,
AUG. A. O. B. SPARKS,
R. L. ANDERSON,
CHAS. AKERMAN,
Appellants' Attorneys.

Due and legal service of this praecipe acknowledged and copy received. This 17th day of November, 1920.

ORVILLE A. PARK,
Solicitors for Appellees.

Filed Nov. 20, 1920.
IRENE ELKINS,
Deputy Clerk.

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1006 PETITION AND ORDER FOR ADDITIONAL TIME TO FORWARD TRANSCRIPT.

The Petition of L. M. Erwin, Clerk of this Court, respectfully shows:

That on November 2, 1910, an order was passed allowing the Clerk ten days in which to forward the Transcript on Appeal, after the filing of the Summary of Evidence in said case.

That said Summary of Evidence was filed March 23, 1921.

That because of the volume of clerical duties devolving upon the Clerk's Office at Macon, as also the extraordinary number of folios in said summary of evidence, it is impossible to prepare and forward said transcript of record before the expiration of thirty days;

Wherefore, petitioner prays that the said time be extended to May 1, 1921, in which the Clerk can forward the Transcript of the Record in said case.

L. M. ERWIN, Clerk.

Read and considered. The Petition is granted. This April 2, 1921.

BEVERLY D. EVANS,
U. S. Judge.

Filed April 2, 1921.
IRENE ELKINS,
Deputy Clerk.

1007 United States of America,
Southern District of Georgia, ss:

I, LENOIR M. EDWIN, Clerk of the United States District Court for the Southern District of Georgia, do hereby certify that the foregoing contains a true and correct copy of the record, assignment of errors, and all other proceedings in the cause of The American National Bank of Macon vs. The Commercial National Bank, and others, lately pending in said Court, as the same now appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Court at Macon in said District, this 21st day of April, 1921.

LENOIR M. ERWIN, Clerk,
(Seal) By CECIL MORGAN, Deputy.

*Præcipe for Record on Appeal.*

Filed January 9th, 1922.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3722.

W. H. HIGHTOWER et al., Appellants,

v.

AMERICAN NATIONAL BANK OF MACON, Appellee.

Præcipe.

The Clerk will please incorporate into the transcript on the appeal of this case the following parts of the record:

1. The printed record filed in the Circuit Court of Appeals.

2. The opinion and judgment of the Circuit Court of Appeals rendered on November 15, 1918.

3. The opinion and judgment of the Circuit Court of Appeals rendered on the 5th day of November, 1921.

4. The petition for appeal and order allowing the same.

5. The assignment of errors.

6. The citation.

7. The appeal bond.

8. This præcipe.

CHAS. L. BARTLETT,
R. L. BERNER,
J. E. HALL,
WARREN GRICE,
R. L. ANDERSON,
CHAS. J. BLOCH,
AUG. O. B. SPARKS,
CHARLES AKERMAN,
*Appellants' Attorneys.*

Due and legal service of the foregoing præcipe acknowledged, this 5th day of January, 1922.

GEORGE S. JONES,
ORVILLE A. PARK,
*Attorneys for Appellee.*

*Opinion of the Court In re American National Bank of Macon, Appellant, vs. Commercial National Bank of Macon et als., Appellees, No.* 3240.

Filed November 15th, 1918.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3240.

AMERICAN NATIONAL BANK OF MACON, Appellant,

vs.

COMMERCIAL NATIONAL BANK OF MACON et als., Appellees.

Appeal from the District Court of the United States for the Southern District of Georgia.

This is an appeal from a decree sustaining motions to dismiss an amended bill in equity filed in the District Court by the appellant, the American National Bank of Macon, against the Commercial National Bank of Macon and its shareholders. The bill as amended showed that it was filed by the plaintiff as a bill in the nature of a creditor's bill on behalf of the plaintiff and all other creditors of the defendant bank against the latter and its shareholders for the purpose of enforcing the statu-ory liability of said shareholders for the payment of the indebtedness of the defendant bank. The averments of the bill as amended disclosed the following facts—(the plaintiff and the defendant banks, each of which was located in the city of Macon, Georgia, being hereinafter referred to as the American Bank and the Commercial Bank, respectively):

On the 31st day of July, 1914, the Commercial Bank applied to the American Bank for a loan of money to enable it to meet its obligations and to pay and satisfy its depositors. After some negotiations between the two banks, they, on August 3rd, 1914, entered into a written contract, of which the following is a copy:

"GEORGIA,
*Bibb County:*

"Articles of Agreement for the Liquidation of the Commercial National Bank of Macon, Georgia, by the American National Bank of Macon, Georgia, both being National Banking Associations, made and entered into between said banks as the contracting parties.

"Whereas, on the 1st day of August, 1914, the Board of Directors of the Commercial National Bank, at a meeting of said Board duly and regularly called, adopted a resolution, which authorized the officers of said Association to commence proceedings for the liquidation of said Association under Sections 5220 and 5223 of the U. S. Revised Statutes, for consolidation with said American National

Bank, and to transfer to said American National Bank all the assets of said Commercial National Bank, which assets were by said resolution so transferred and assigned, in order to fully protect and secure said American National Bank for all moneys advanced or to be advanced by said Association in the assumption and payment of the liabilities of said Commercial National Bank shown by a list of said liabilities hereto attached and identified as Exhibit 'A', and by the signature of the parties hereto; and which said resolution further provided that said American National Bank should take over the business of said Commercial National Bank, liquidate said assets, and account to the shareholders of said Commercial National Bank for any overplus which might remain after paying the depositors and others indebtedness of said Commercial National Bank in full, and the expense of realizing on the assets so transferred, the said American National Bank to charge nothing for its services in so doing; and which resolution further authorized and directed the officers of said Commercial National Bank to make such contract with the American National Bank as might be necessary or appropriate in order to carry out the general purpose of said resolution, the details of said contract to be left to the discretion of said officers; and

"Whereas, on the same date, the Board of Directors of the American National Bank, at a meeting of said Board duly and regularly called, adopted a resolution whereby said American National Bank assumed the payment of said depositors and other liabilities of said Commercial National Bank, shown by the list of liabilities set out in Exhibit 'A' hereto attached and hereinbefore referred to, upon condition that the assets of said Commercial National Bank should be transferred to said American National Bank sufficient in amount and in value in the estimation of the officers of the American National Bank to fully protect and secure said Association for any and all amounts payment of which was assumed under said resolution; and which resolution authorized the officers of said Association to make such contract as might be necessary to carry out the purpose of said resolution, the details to be left to the discretion of said officers; and

"Whereas, the preliminaries and conditions in said resolution mentioned have been complied with, and the assets of the Commercial National Bank have been delivered to said the American National Bank.

"Now, therefore, these Articles of Agreement witness:

I.

"That said Commercial National Bank has transferred, assigned, conveyed and confirmed, and does by these presents transfer, assign, convey and confirm unto the American National Bank of Macon, Georgia, its successors and assigns, all of the assets of every kind and description, including cash and cash items on hand at the close of business on August 1, 1914, bills receivable, bonds, real estate and personal property and interests therein, and choses in action of

all kinds including all of the United States bonds now on deposit with the Treasurer of the United States as security for the circulation of the Commercial National Bank of Macon and for deposits of United States deposits; to have and to hold the same unto it, said the American National Bank of Macon, its successors and assigns, in fee-simple forever; and the title to said assets and each and all thereof said the Commercial National Bank of Macon, for itself and its successors, hereby warrants unto said the American National Bank, its successors and assigns, against the claims of all persons whatoever.

II.

"That in contemplation of the liquidation of said Commercial National Bank under Sections 5220, 5221 and 5223, U. S. Revised Statutes, said Commercial National Bank, by its officers and directors, will call a meeting of the shareholders of said Association to be held at Macon, Georgia, on August 12, 1914, and on the date or dates to which said meeting may be from time to time adjourned, and will procure proper resolutions by said shareholders and a sufficient majority thereof to comply with the law in such cases made and provided, liquidating said Association and consolidating same with the American National Bank of Macon by the purchase of the assets of said Commercial National Bank by the American National Bank, but without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank; and ratifying and confirming the action of the Board of Directors of said Commercial National Bank as herein recited; and ratifying and confirming this contract.

III.

"That said Commercial National Bank will also procure proper resolutions to be passed by said shareholders, appointing said American National Bank as liquidating agent for said Commercial National Bank in said liquidation for consolidation as aforesaid, said liquidation to be conducted in accordance with law and under the supervision of the Board of Directors of said Commercial National Bank.

IV.

"That said Commercial National Bank, until the final liquidation of its affairs and final settlement with its shareholders, agrees to maintain its corporate existence, and that its directors and officers will at all times when called upon so to do by said American National Bank execute and deliver in the name of said Association all other and further writings of all kinds which may be necessary to fully effectuate the transfer of said assets, the liquidation of said Association, and this contract.

V.

"That in consideration of the foregoing acts and agreements by the Commercial National Bank, said American National Bank hereby agrees that it will, and it does hereby assume, and promises to pay the same when and as the same are presented for payment, the depositors and other liabilities of said Commercial National Bank of Macon shown in Exhibit 'A' hereto attached; and that in addition thereto, it will and does hereby assume the redemption of the circulating notes of said Commercial National Bank; and that it will procure such resolution to be passed by its Board of Directors as may be necessary for it to assume the redemption of said circulating notes.

VI.

"That said American National Bank will accept the appointment as liquidating agent of said Commercial National Bank, and will proceed with all due and reasonable diligence to liquidate said Association and to collect and reduce to cash all the assets of said Association, all of said assets to be held as security by said American National Bank for all advances made by it in paying the depositors and other liabilities of said Commercial National Bank and the actual expenses incurred by said American National Bank in realizing on said assets; and that after deducting from the proceeds of said assets the actual expenses incurred by said American National Bank in liquidating said Association and acting as liquidating agent and in collecting said assets and realizing upon the same, it will apply said proceeds, first, in repaying to itself all amounts advanced by it here-under, with interest thereon at the rate of seven (7%) per cent per annum; next, in discharging the liabilities of said Commercial National Bank which shall not have been paid by advances made by said American National Bank; and that when all of said liabilities have been fully discharged it will account to the shareholders of said Commercial National Bank and from time to time pay over to said shareholders pro rata the surplus remaining in its hands from the proceeds of said assets; said American National Bank to act as such liquidating agent without compensation for its own services.

"It being distinctly agreed and understood that in the event the said liquidation should be interrupted or discontinued for any reason beyond the control of said American National Bank, then and in that event said American National Bank shall and does hold all the assets of said Commercial National Bank as security for the advances which may have been made by it, up to the time such liquidation may be so discontinued.

"And it being further distinctly agreed and understood that neither the resolutions of said Boards of Directors of said Associations nor this contract shall relieve the shareholders of the Commercial National Bank from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such

shareholders' liability, for any deficit which may remain after exhausting the other assets of said Association in the payment of its liabilities.

"In witness whereof, the parties hereto have caused these presents to be signed and delivered in duplicate by their proper corporate officers, and their corporate seals to be hereto affixed, this 11th day of August, 1914.

[Seal of Bank.]

COMMERCIAL NATIONAL BANK OF MACON, GEORGIA,
By E. Y. MALLARY,
*President.*

Attest:

E. N. LEWIS,
*Cashier.*

[Seal of Bank.]

AMERICAN NATIONAL BANK OF MACON, GEORGIA,
By R. J. TAYLOR,
*President.*

Attest:

E. C. SCOTT,
*Cashier.*"

The following is a copy of the resolution of the board of directors of the Commercial Bank adopted on August 1st, 1914, and referred to in the contract above set out:

"Resolved, That in the opinion of the Board of Directors of this association it is expedient for this association to go into voluntary liquidation under Sections 5220 and 5223 of the United States Revised Statutes, and that the officers of this association be and they are hereby directed to proceed under the by-laws to call a meeting of its stockholders to consider this question and the consolidation of this association with the American National Bank of Macon, Georgia, by the sale of its assets to the said bank.

"Resolved, further, That the exigencies of the situation are such that in contemplation of the liquidation of this association as aforesaid, the Board of Directors of this association hereby authorize the officers of this association to transfer to the American National Bank of Macon, Georgia, as cash, or as collateral for the notes of this association, all of the assets of this association, including cash, cash items, bills receivable, bonds, real estate, and personal property and choses in action, of all kinds, which said assets are hereby transferred, assigned and delivered to the American National Bank of Macon, Georgia, in order to fully protect and secure said bank for all moneys advanced or to be advanced by that bank under the

assumption and payment of its deposits, bills payable, and other liabilities of this association shown by the list of liabilities this day furnished by this association to said bank—said American National Bank of Macon, Georgia, to take over the business of this association and to account to the shareholders of this association for any overplus which may remain after paying the indebtedness of this association in full and the expense of realizing on the assets so transferred, said bank to charge nothing for its services in so doing.

"The officers and finance committee are hereby given full power and authority to carry out the general purpose of this resolution, and the details to be left to the discretion of said officers and committee, and the said officers and committee are further authorized to make such contracts with said bank as may be necessary or appropriate hereunder."

The following is a copy of the resolution of the directors of the American Bank adopted on August 1, 1914, and referred to in the above copied contract:

"Resolved That this association assume the payment of the deposits, bills payable, and other liabilities of The Commercial National Bank of Macon, shown by the list of liabilities furnished by said bank to this bank, and agree to pay the same when and as the same are presented for payment, upon condition that said association transfer to this association as cash or collateral for its notes, cash, cash items, bills receivable, bonds, real estate, and other assets, sufficient in amount and in value in the estimation of the officers of this association to fully protect and secure this association for any and all amounts so assumed, or shall otherwise satisfactorily secure this association for all amounts paid or assumed; this association to take over the business of said association in the manner aforesaid, accounting to the shareholders of said association for any overplus which may remain after paying the indebtedness of said association in full, and the expenses of realizing on the assets transferred to this association as aforesaid; this association to charge nothing for its services in so doing. The officers of this association are hereby given full power and authority to carry out the general purpose of this resolution, the details to be left to the discretion of said officers, and said officers are further authorized to make such contract with the directors of said association or with such liquidating agent as may be appointed for said association, provided, however, that this resolution shall not become effective until the other bank of the Macon Clearing House Association shall, by proper resolutions, agree to supply, in proportion to their respective capital and surplus, their proportionate share of cash and exchange that may be necessary to meet withdrawals by depositors not immediately redeposited in this association, and other cash demands to which this association may be required to respond. Provided, further, that in the event the officers of this association shall, upon a further investigation of the affairs of The Commercial National Bank, deem it unsafe to proceed under this resolution, they shall not do so."

Pursuant to the agreement and resolutions above set out, the American Bank, on August 3, 1914, took charge of all assets of the Commercial Bank so transferred to the former, and from and after that date paid in due course and as called upon all of the depositors of the Commercial Bank, its bills payable, and other liabilities, and proceeded to reduce the transferred assets to cash and to apply the amounts received to reimburse itself for the amounts it had disbursed in the payment of the liabilities of the Commercial Bank pursuant to said agreement. For some two weeks after the above copied agreement between the two banks was entered into, the Commercial Bank continued in active operation, paying off its depositors, cashing checks drawn on it, receiving deposits from its customers, clearing checks on the other Macon banks through the Macon Clearing House, checking on its deposits with other banks, and transacting other business as an active banking institution, its business being handled through its own officers and clerks. Funds to enable it to pay its depositors and meet its other obligations were obtained by it on checks drawn by its proper officers on the American Bank, which checks were cashed by the latter and charged to the account of the Commercial Bank as overdrafts. The amount claimed by the American Bank to be due to it was largely incurred during the period just mentioned. After the depositors of the Commercial Bank were in large part paid, it continued to draw checks on the American Bank, and these checks were cashed by the latter and charged to the account of the former as above stated. It was found to be impracticable to take notes, as the above copied resolutions showed had been contemplated, for the amounts disbursed by the one bank in the payment of the liabilities of the other one, and it was agreed by the officers and Finance Committee of the Commercial Bank with the officers of the American Bank that the amounts so advanced by the latter should be carried by it as an overdraft and that the overdraft shosld be secured by the assets transferred; and this was accordingly done. As collections were made on the notes and other receivables transferred to the American Bank, the amounts so collected were deposited in the American Bank and by it applied to the reduction of the overdraft of the Commercial Bank. In reports made by the Commercial Bank to the Comptroller of the Currency the amount of its overdraft on the American Bank was listed as a liability under the head, "due American National Bank." While the Commercial Bank was in process of liquidation pursuant to the resolution of its shareholders, by agreement with the Liquidating Committee appointed by its shareholders the American Bank as Liquidating Agent offered the Commercial Bank's banking house, with the furniture and fixtures therein, for sale at public outcry after proper advertisement, but, a fair price not being realized at said sale, the American Bank offered to purchase said building at $40,000, said sum to be applied to reducing the indebtedness of the Commercial Bank to it, and this proposition was accepted, and said property was conveyed to the American Bank by the officers of the Commercial Bank pursuant to a resolution adopted by the latter's directors on July 1, 1916, of which the following is a copy:

"Resolved, That the offer of the American National Bank of Macon, as contained in the letter from R. J. Taylor, President, to E. Y. Mallary, President Commercial National Bank, dated July 1, 1916, which said letter has been submitted and read at this meeting, to purchase the Commercial Bank Building, including the vault, safety deposit boxes, bank and other fixtures, and furniture, at and for the sum of Forty Thousand Dollars ($40,000.00), to be credited on the indebtedness of the Commercial National Bank to the American National Bank be and the same is hereby accepted, and the president or vice-president and cashier of this bank are hereby authorized and directed to execute on behalf of this bank and under its seal good and sufficient conveyance of the property to the said American National Bank."

On September 30, 1914, the following resolutions were adopted by votes of more than two-thirds of the shareholders of the Commercial Bank:

"Resolved, That the Commercial National Bank be placed in voluntary liquidation under the provisions of Sections 5220 and 5221 of the United States Revised Statutes, to take effect upon this date, and that the American National Bank of Macon, Georgia, be appointed liquidating agent of said bank; that liquidation shall be conducted in accordance with law and under the supervision of the board of directors, who shall require a suitable bond to be given by the said agent in an amount to be fixed by the board of directors; that the said liquidating agent shall render quarterly reports to the Comptroller of the Currency on the 1st of January, April, July and October of each year showing the progress of said liquidation until said liquidation is completed; that said liquidating agent or committee shall render an annual report to the shareholders on the date fixed in the articles of association for said annual meeting, at which meeting the shareholders may, if they see fit, by a vote representing a majority of the entire stock of the bank, remove the liquidating agent and appoint another in place thereof; that a special meeting of the shareholders may be called at any time in the same manner as if the bank continued an active bank, and at said meeting the shareholders may, by a vote of the majority of the stock, remove the liquidating agent; that the Comptroller of the Currency is authorized to have an examination made at any time into the affairs of the liquidating bank until the claims of all creditors have been satisfied and that the National Bank Examiner will be compensated for his time and expense in making the examination in question."

"Whereas, the Board of Directors of this Association by resolution adopted on August 1, 1914, transferred and assigned to the American National Bank of Macon all of the assets of this Association as security for the liabilities of this Association which were assumed by the said American National Bank, said resolution being passed on contemplation of the voluntary liquidation of this Association

under the provisions of Sections 5220 and 5221 of United States Revised Statutes, and

"Whereas, on August 11, 1914, a contract between this Association and the said American National Bank, signed by the respective officers of said association, was duly entered into, said contract being made pursuant to the resolution of the Board of Directors aforesaid, and

"Whereas, on August 12, 1914, a special meeting of the shareholders of this Association was held at the banking house of the Association in the City of Macon, at which meeting stockholders representing 2,616 shares were present in person and by proxy, at which said meeting a resolution was unanimously passed, ratifying and approving the action of the Board of Directors in transferring the assets of this Association to the American National Bank as aforesaid, and ratifying and approving the contract between the two associations dated August 11, 1914.

"And whereas said meeting of stockholders was not called and held in accordance with the articles of association, in that only ten days' notice of said meeting was given instead of thirty days, as required by said articles of association; and

"Whereas, this meeting of stockholders has been called in accordance with the articles of association and after thirty days' notice as provided in said articles of Association, for the purpose of ratifying the action of the previous meeting and of taking appropriate action looking to the voluntary liquidation of this Association;

"Therefore, resolved: That the action of the Board of Directors of this Association as contained and set forth in the resolution adopted by said Board on August 1st, 1914, transferring and assigning the assets of this Association to the American National Bank of Macon, said resolution appearing on the minutes of said Board of Directors on August 1st, 1914, be and the same is hereby in all respects ratified and approved by the shareholders of this Association;

"Resolved, further, that the contract between this Association and the American National Bank of Macon, signed by their respective officers and dated August 11th, 1914, said contract having been made pursuant to the resolution of the Board of Directors aforesaid, be and the same is hereby in all respects ratified and approved:

"Resolved further, that the action of the special meeting of stockholders, approving said resolution of the Board of Directors and the contract aforesaid and providing for the voluntary liquidation of this Association, under Sections 5220 and 5221 of the United States Statutes, be and the same is hereby in all respects ratified and approved."

Pursuant to those resolutions the Commercial Bank was placed in voluntary liquidation, the liquidation being practically completed at the time the suit was brought. In satisfying the liabilities of the Commercial Bank the American Bank has paid out more than $320,000 in excess of the amounts realized from the transferred assets. The assets of the Commercial Bank still remaining uncollected and undisposed of are of little value, and there will not be

realized from them an amount sufficient to reduce below $300,000 the excess of the American Bank's said payments over the amounts realized from the transferred assets.

Geo. S. Jones and Orville A. Park (King & Spalding, and Hardeman, Jones, Park & Johnston, on the brief), for appellant.

C. L. Bartlett, R. C. Jordan, R. Douglas Feagin, Oliver C. Hancock, T. E. Ryals, Robt. L. Anderson, W. A. Dodson, W. D. McNeil, Robert L. Berner, J. E. Hall, and Warren Grice (Minter Wimberly, Jesse Harris, E. P. Mallary, and Greene F. Johnson, on the brief), for appellees.

Before Pardee, Walker, and Batts, Circuit Judges.

WALKER, *Circuit Judge* (after stating the facts as above):

The dismissal of the amended bill is sought to be sustained on the ground that its averments do not show that the plaintiff bank has a claim or demand against the defendant bank for which the statute (38 St. 273) makes the latter's shareholders individually responsible. In behalf of the appellees it is contended that the alleged transaction between the two banks was a sale of assets by one of them to the other, or a consolidation of the two, and that the contract entered into and performance under it did not result in the creation of the relation of creditor and debtor between them. Provisions contained in the contract give some color to this contention if they are considered by themselves without due regard to the remainder of the contract, the situation with which it dealt, and the conduct of the parties to the contract while performance under it was in progress evidencing what each of them understood was the effect of a compliance by the American Bank with the obligations imposed upon it by the contract. The provisions referred to—namely, the one as to the transfer of the assets, the one in regard to liquidating the Commercial Bank and consolidating it with the American Bank by the purchase by the latter of the assets of the former, and the one in regard to making one of the banks liquidating agent for the other—lose the significance sought to be attributed to them when they are considered in connection with other provisions contained in the contract and in the light of the situation existing when the contract was made and for some time afterwards, and of the construction of the contract by both parties to it as disclosed by what was done under it.

The averments of the bill show that at the time the contract was entered into, and for some time thereafter, the Commercial Bank continued in active operation, performing all the ordinary functions of a bank through its own officers and clerks. Its status then was not that of a liquidating bank. While its board of directors contemplated and made provision for its future liquidation, if and when duly authorized by the required vote of its shareholders, the process of liquidation provided for by the statute (R. S., §5220) had not begun and could not have begun prior to its going into liquidation

and being closed by the required vote of its shareholders owning two-thirds of its stock. While the bank was in active operation, its liquidation not having been determined upon by its shareholders, it was capable of incurring obligations for which its shareholders would be responsible under the statute. Schrader v. Manufacturers' National Bank of Chicago, 133 U. S. 67; Wyman v. Wallace, 201 U. S. 230. The American Bank's obligation to pay the Commercial Bank's depositors and other liabilities when and as the same were presented for payment was effective from the time the contract was made, not being dependent or contingent upon the contemplated closing and liquidation of the Commercial Bank being determined upon by the required two-thirds vote of its shareholders. Performance was begun by the American Bank while the Commercial Bank remained open, continuing to carry on in the customary way the banking business in which it was engaged. By the terms of the contract the American Bank also obligated itself to continue to pay the Commercial Bank's depositors and other liabilities when and as the same were presented after the latter went into liquidation and was closed, in the event that happened, the American Bank agreeing to accept the appointment as liquidating agent of the Commercial Bank. In so far as the contract obligated the American Bank to take care of the liabilities of the Commercial Bank prior to the latter being duly closed and put into liquidation, it was one capable of being made by the two banks, acting through their respective boards of directors and managing officers, without being authorized or ratified by a vote of the shareholders of either. Making arrangements for funds needed to meet its liabilities as they accrue is not out of the ordinary course of a banking business. While the Commercial Bank was open, receiving deposits and otherwise continuing the business in which it had been engaged, its directors and managing officers were empowered to incur debts in its behalf to secure funds required to enable it to meet its obligations as they accrued. The creation of debts under such circumstances and for such a purpose is not more out of the ordinary course of a banking business than the incurring of liabilities by the acceptance of deposits. In determining the meaning and effect of that part of the contract which obligated the American Bank to supply the funds required to take care of the liabilities of the Commercial Bank as they accrued before the question of its closing and going into liquidation should be determined by its shareholders, our consideration is not confined to the language used in the written instrument evidencing the agreement of the parties, but where the terms employed are in any respect equivocal or of doubtful meaning, the construction given to the contract by both parties to it, evidenced by their dealings with each other in the course of carrying out the contract, may be looked to.

The contract contains expressions and provisions which do not seem to us to be reconcilable with the existence of an intention other than that the making by the American Bank of the agreed disbursements in taking care of the liabilities of the Commercial Bank was to have the effect of creating a debt or debts owing by the latter to the former. Those disbursements were called "advances," and it

was provided that the amounts realized by the American Bank from the assigned assets was to be applied by it "first, in repaying to itself all amounts advanced by it hereunder, with interest thereon at the rate of seven (7%) per cent per annum; next, in discharging the liabilities of the Commercial National Bank which shall not have been paid by advances made by the American National Bank; and that when all of said liabilities have been fully discharged, it will account to the shareholders of said Commercial Bank and from time to time pay over to said shareholders pro rata the surplus remaining in its hands from the proceeds of said assets." This plainly indicates that the parties intended that performance by the American Bank of the obligations it incurred was to have the effect of creating an interest-bearing debt owing to it, and that the transferred assets were received and held by it, not as property bought by it, but as a pledge or security for the payment of that debt. If the stipulated outlays by the American Bank had been understood to be payments on the price of the assets transferred, it is not to be supposed that they would have been called "advances," or that interest on them would have been provided for. Laflin & Rand Powder Co. v. Burkhardt, 97 U. S. 110. The concluding provision of the contract was to the effect that neither the contract nor the resolutions authorizing it "shall relieve the shareholders of the Commercial National Bank from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability, for any deficit which may remain after exhausting the other assets of said Association in the payment of its liabilities." It hardly is conceivable that this provision would have been inserted in the absence of an intention that the making by the American Bank of the disbursements it obligated itself to make would result in creating a liability of the Commercial Bank for which the latter's shareholders would be individually responsible.

But it may be assumed or conceded that the language of the contract fails to show unambiguously that performance by the American Bank of the obligations it incurred was to have the effect of making it a creditor of the Commercial Bank. The averments of the bill show that both parties to the contract, from the commencement of performance under it, treated the payments made by the American Bank as having the effect of making it a creditor of the Commercial Bank. The American Bank entered the payments on its books as overdrafts. This was in pursuance of an agreement to which the officers and the Finance Committee of the Commercial Bank were parties. On the books of the latter these transactions were entered under the head, "due American National Bank." Each of the entries indicated the existence of the relation of creditor and debtor, not that of purchaser and seller. The agreement between the two banks in pursuance of which the disbursements made by the one to discharge the liabilities of the other were entered as overdrafts of the one on the other was as clear a recognition that debts were thereby created as if the one bank had given its notes to the other for the amounts of such disbursements. The incidents mentioned, as well as others disclosed, show that those in charge of the

business of each of the banks understood that what was done under the contract had the effect of creating a debt owing by the Commercial Bank to the American Bank. It fairly appears from the averments of the bill as amended that neither party to the contract during the period of performance understood that it had the meaning now attributed to it in behalf of the appellees, and that the conduct of each of them from the time performance under the contract commenced was inconsistent with the contract having that meaning or effect.

We think the averments of the bill as amended show that the American Bank, while the Commercial Bank in the customary way was transacting business as an active banking institution, so made payments for it and at its instance or request that a claim or demand was created against the last named bank for which its shareholders are by the statute made individually responsible to the extent of the amount of their stock. It follows that the dismissal of the bill as amended was erroneous. The decree to that effect is reversed.

Reversed.

*Judgment.*

Extract from the Minutes of November 15th, 1918.

No. 3240.

AMERICAN NATIONAL BANK OF MACON

versus

COMMERCIAL NATIONAL BANK OF MACON et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, reversed;

It is further ordered, adjudged and decreed that the appellees be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

*Opinion of the Court.*

Filed November 5th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3722.

W. H. HIGHTOWER et al., Appellant,

versus

AMERICAN NATIONAL BANK OF MACON, Appellee.

Appeal from the District Court of the United States for the Southern District of Georgia.

Charles L. Bartlett, Robert L. Berner, Charles Akerman, Robert L. Anderson, John E. Hall, Warren Grice, (Richard C. Feagin, Thomas E. Ryals, Augustus O. B. Sparks, on the brief) for Appellant.

Orville A. Park, George S. Jones, (Jones, Park & Johnston on the brief,) for Appellee.

Before Walker and Bryan, Circuit Judges, and Sibley, District Judge.

BRYAN, *Circuit Judge:*

This is an appeal from a final decree establishing in favor of the American Bank of Macon, Georgia, the statutory liability of appellants as shareholders of the Commercial National Bank of Macon, Georgia.

Reference is made to the opinion of this Court on a former appeal, reported in 254 Fed. 249, in which a decree of the District Court dismissing the bill was reversed, for a statement of the averments of the bill filed by appellee, and for the full text of the contract and resolutions pleaded and attached as exhibits.

It was decided on the former appeal that the bill states a case. Whether the evidence supports the averments of the bill, as it is held to do by the decree now appealed from, is the only question presented by this appeal. If the evidence shows that the American bank was a creditor of the Commercial bank, it is admitted by appellants that the decree of the District Court is correct and should be affirmed. On the other hand, if the evidence shows that the American bank was a purchaser of the assets of the Commercial bank, it is admitted by appellee that the decree is erroneous and should be reversed.

In June, 1914, the Comptroller of the Currency complained of the condition of the Commercial bank as disclosed by the report of a National Bank examiner, and required the material reduction of

large lines of credit extended to certain customers, and particularly to directors and corporations in which directors were interested. In July it was stated in a report by its finance committee that the bank was in need of $100,000 to make it above criticism; that money borrowed in excess of the amount permitted by law was about $60,000; and that its cash on hand was too low to be allowed to stand. Rumors as to the solvency of the bank became current, exchanges were held up, and remittances were not promptly made. Finally, on July 31, 1914, an appeal was made to the president of the American bank for assistance. The officers of the two banks met, and after an all night session spent in considering the condition of the Commercial bank, the two resolutions of August 1, 1914, were adopted. Thereafter, in pursuance of these resolutions the contract of August 11, 1914, was entered into by authority of the boards of directors of the two banks, and the resolutions of August 12, 1914, and September 30, 1914, were adopted by the shareholders of the Commercial bank. After August 1, 1914, the Commercial bank transacted whatever business it did in the banking offices of the American bank, but by its own officers, for more than two weeks at least, during which time the Commercial bank paid its depositors largely with money furnished by the American bank, but maintained and kept separate books and accounts. When it was necessary to secure funds from the American bank appropriate entries of debit and credit were made by the bookkeepers of the two banks.

Immediately after the adoption of the resolutions of August 1, 1914, the directors of the two banks caused advertisements to be inserted in the daily papers. That of the American bank announced that a consolidation of the business of the two banks had been effected, that the assets of the Commercial bank had been taken over by the American bank, and that the latter would take care of all the business theretofore handled by the former; that the money on deposit with the Commercial bank had been transferred to the American bank, and that the latter would pay checks against the former; and that checks should be written on the blanks of the Commercial bank until the depositors made other arrangements. The advertisement of the Commercial bank announced that a merger of the two banks had been perfected; that all the assets of the Commercial bank had been transferred to the American bank; that checks of customers upon the Commercial bank would be honored by the American bank; that depositors of the Commercial bank should use the blank checks of that bank until they transferred their accounts to the American bank, or made other arrangements; and that arrangements had been made to protect the interests of the stockholders of the Commercial bank.

At the shareholders' meeting held August 12, 1914, objection was made to that provision in the contract executed the day before by the directors to the effect that shareholders of the Commercial bank should not be relieved of their liability as such, for any deficit that might remain after exhausting the other assets of the bank; but upon the statement being made that the American bank insisted upon the provision remaining in the contract, the resolution contain-

ing it was unanimously adopted. According to the minutes of that meeting, one of the directors stated that the American bank relied upon the statutory liability of the shareholders. The director shown by the minutes to have made this statement testified that he did not do so. The shareholders also appointed a committee to represent them in liquidating the assets of the Commercial bank. At the meeting of the shareholders on September 30, 1914, a resolution was adopted in which it was recited that the transfer of the assets by the Commercial bank to the American bank was made as security. At this meeting the shareholders also formally placed the Commercial bank in voluntary liquidation, and appointed the American bank liquidating agent. The shareholders' committee represented the interests of the Commercial bank and its shareholders in various ways. It corresponded with the Comptroller of the Currency and represented that the assets of the Commercial bank were held as security by the American bank; it authorized the sale of bonds to the amount of $300,000, which it claimed were owned by the Commercial bank; it collected rents from the Commercial bank building, made efforts to sell it, and failing to get a satisfactory price from others, finally sold it to the American bank; it brought suits to enforce collections due to the bank, presented claims in favor of the bank in several bankruptcy proceedings. It also defended suits against the bank, in one of which, brought by shareholders for the appointment of a receiver, it set up the transactions between the Commercial bank and the American bank, but made no allegation or claim that the Commercial bank had sold its assets. As late as April, 1915, it was considering the sale of unpaid notes to the American bank.

It is averred in the fourth paragraph of the amendment to the bill that it was found to be impracticable to take notes "as had been contemplated by the resolutions," and it is then averred that it was agreed that the indebtedness of the Commercial bank to the American bank should be carried by the latter as an overdraft. The master found that the agreement alleged had not been proven, but also found that the indebtedness was in fact carried as an overdraft.

It is averred in the fifth paragraph of the amendment to the bill that for "some two weeks" after August 1, 1914, the Commercial bank continued in active operation. The evidence showed and the master found that it cashed checks drawn on it, received deposits, cleared checks through the Clearing House, checked on its deposits in other banks, collected notes, and renewed notes for its customers, for a longer period than two weeks.

It is averred in the sixth paragraph of the amendment to the bill that the board of directors of the Commercial bank adopted a resolution, a copy of which was attached as an exhibit, accepting an offer from the American bank to purchase the Commercial bank building for the sum of $40,000, to be credited on the indebtedness of the Commercial bank to the American bank. The resolution did not appear in the minutes of the directors, and hence was not proven, but the testimony showed that the directors did in fact authorize the sale.

The master found that the transactions between the two banks did not constitute a sale of the assets of the Commercial bank, but did constitute the American bank the sole creditor of the Commercial bank. The report of the master was confirmed by the District Court.

Appellee moves to dismiss the appeal upon the ground that several defendants, as to whom a severance has not been had, have not joined in it.

The liability is several and not joint and may be appealed from by one or more defendants without joining others. Winters v. United States, 207 U. S. 254.

The motion to dismiss the appeal is therefore denied.

Appellants insist that this Court held on the former appeal that the contract between the two banks, construed in the light of the resolutions, was ambiguous, and that appellee's right to recover was altogether dependent upon the conduct of the parties and the construction placed by them upon the contract and the resolutions upon which it was based. Proceeding upon that theory, it is argued that the evidence fails to prove the conduct of the parties alleged in the fourth, fifth and sixth paragraphs of the amendment to the bill. But the contention is untenable that the opinion on the former appeal held that the contract was ambiguous. Both the contract and the conduct alleged in pursuance of it were discussed and the opinion was based upon both.

The averment of the fourth paragraph of the amendment that the indebtedness of the Commercial bank was agreed to be represented by overdrafts instead of by notes is susceptible of proof by the undisputed fact that it was represented by that method. Of course, appellee loses the benefit that would have been derived from an agreement to give and accept notes.

The averment of the fifth paragraph that "for some two weeks" after August 1, the Commercial bank continued in active operation, cashing checks, receiving deposits, and otherwise conducting a banking business, it appears to us, is sustained by the evidence. The fact that the business of the Commercial bank was conducted in the banking house of the American bank, did not deprive the former bank of its character as a banking institution.

The averment of the sixth paragraph to the effect that a resolution was adopted by the directors of the Commercial bank authorizing a sale of the bank building to the American bank, the proceeds to be credited on the former's indebtedness to the latter, was not proven; and although it is true that the things were done which it is claimed the resolution authorized, yet the record evidence, in the form of a minute entry, of an acknowledgment of the indebtedness became lost to appellee upon its failure to prove the resolution. The contract and various resolutions and the conduct of the parties throughout are all consistent with the theory of a loan. Although the resolution adopted by the American bank on August 1, 1914, contemplated the purchase of assets, it actually provided for advances upon collateral security. At the shareholders' meeting on September 30, 1914, only the pledge of assets was provided for, and a sale of assets was not. Likewise the provision for repaying advances with accrued

interest to the American bank, is the most positive kind of evidence of a loan. The contention by appellants that the assets of the Commercial bank were only intended to be pledged in the event the shareholders failed to ratify the resolutions and contract adopted and entered into by the directors on behalf of the two banks, or in the event the transaction should be attacked by suits, is not a reasonable or satisfactory one, in view of the general character of the provision which contains no such limitation. The correspondence with the Comptroller, the collection of rents on the Commercial bank building, the bringing and defending of suits by the Commercial bank and by the shareholders' committee, all show that the assets of the Commercial bank were held as security by the American bank.

It is argued that the activities of the shareholders' committee is explained by the expectation that the stock would yield a return to the shareholders; but long before the committee of the shareholders ceased to exercise acts of ownership over the assets of the Commercial bank, it had become apparent that there could not by any possibility be any value in the shares of stock held in the Commercial bank. Indeed, it had become apparent that an assessment of shareholders for the full amount of their statutory liability would be insufficient to provide for the payment of the debts of the Commercial bank. The transactions are inconsistent throughout with the theory of a sale. If the American bank had purchased the assets of the Commercial bank, there would have been no occasion for the insertion in the contract of a provision that the Commercial bank should pay interest. It would have been most unusual, in that event, for the American bank to have agreed to account to the Commercial bank for an excess realized by it upon assets which it had purchased outright. Why would the shareholders' committee have passed a resolution in 1915 looking to the sale of the unpaid notes of the Commercial bank to the American bank, if the sale had taken place in 1914? If the assets of the Commercial bank had been sold in 1914, why would the committee of the shareholders in 1915 be asserting or concerning themselves about the liability of debtors to the Commercial bank who had become bankrupt? It is almost inconceivable that the shareholders and their committee would repeatedly and continuously over a long period of time declare by resolution and show by their conduct that assets had only been pledged to secure a loan if it had been the fact that the entire assets had long since been sold.

The newspaper advertisements are not important. They were undoubtedly intended to bridge over a crisis and to allay any feeling of uneasiness on the part of depositors in the Commercial bank. Neither party was estopped by anything stated in them from asserting any contractual right or obligations it possessed.

The excess of liabilities over assets of the Commercial bank, amounting to more than the shareholders' liability of $300,000, has been paid by the American bank. There is no claim that credit was not given for the full value of these assets.

We are of opinion that the decree of the Court is well sustained by the evidence, and it is therefore

Affirmed.

(Original filed November 5th, 1921.)

*Judgment.*

Extract from the Minutes of November 5th, 1921.

No. 3722.

W. H. HIGHTOWER et als.

versus

AMERICAN NATIONAL BANK OF MACON.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants and the sureties on the appeal bonds herein be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

*Petition for Appeal and Order Allowing Same.*

Filed January 9, 1922.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3722.

W. H. HIGHTOWER et al., Appellants,

v.

AMERICAN NATIONAL BANK OF MACON, Appellee.

The above named Appellants, W. H. Hightower, B. A. Wright, C. H. Andrew, Mrs. Annie Inman Grant, John W. Grant, W. C. Winburn, Leon S. Dure, C. M. Adams, Guy Armstrong, R. E. Hightower, A. B. Hinkle, W. T. Anderson, N. Z. Anderson, A. J. Sams, R. W. Dickerson, Mary R. Huguenin, as Executrix of will of E. D. Huguenin, P. W. Pullin, Mrs. Rubie Stafford, Oscar Bradley, Kenneth W. Dunwody, W. Elliot Dunwody, W. E. Dunwody, Evelyn W. Hubbell, George W. Hubbell, Macon Cooperage Company, R. C. Ries, Executor of will of F. C. Ries, W. A. McKenna, Atlantic National Fire Insurance Company, J. F. Lewis, Mrs. Lamar L. Oglesby, W. D. Wells, W. A. Roush, W. A. Roush, Agent, L. O. Ben-

ton & Brother, L. O. Benton and J. S. Malone, former stockholders of Southern Securities & Financing Company, L. O. Benton, L. O. Benton & Brother, J. W. Payne, Mrs. Bessie N. Proudfit, Executrix of will of Alexander Proudfit, Mrs. Meta Isabel Pace, Joel A. Smith, R. L. Smith, A. M. Stewart, E. A. Middlebrooks, J. S. Coon, Ed. A. Sheridan, W. A. Little and Mrs. Hattie J. Lane, Executrix of will of A. W. Lane, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, and that a judgment has therein been rendered on the 5th day of November, 1921, affirming the decree of the District Court of the United States for the Southern District of Georgia, and that the matter in controversy in said suit exceeds One Thousand Dollars ($1,000), besides costs, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Appellants further show that on November 15th, 1918, said Circuit Court of Appeals rendered a judgment in said cause reversing said District Court, which had sustained a motion to dismiss the bill in said cause, and that said last mentioned judgment could not be appealed from at that time because the same was not a final disposition of the cause.

Wherefore, the said Appellants pray that an appeal be allowed them in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States in order that the errors complained of in the Assignment of Errors herewith filed by said Appellants, may be reviewed; and if error be found, corrected, according to the laws and customs of the United States.

CHAS. L. BARTLETT,
R. L. BERNER,
J. E. HALL,
WARREN GRICE,
R. L. ANDERSON,
CHAS. J. BLOCH,
AUG. O. B. SPARKS,
CHAS. AKERMAN,
*Attorneys for Appellants.*

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3722.

W. H. Hightower et al., Appellants,

v.

American National Bank of Macon, Appellee.

It is ordered that the appeal in the above entitled cause to the Supreme Court of the United States be, and is, hereby allowed as

prayed, and it is ordered that said judgment of November 5, 1921, be superseded pending this appeal.

This 4th day of January, 1922.

NATHAN P. BRYAN,
*United States Circuit Judge, Fifth Circuit.*

*Assignments of Error.*

Filed January 9th, 1922.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3722.

W. H. HIGHTOWER et al., Appellants,

v.

AMERICAN NATIONAL BANK OF MACON, Appellee.

Assignment of Errors.

The Appellants in the above entitled cause, in connection with their petition for appeal herein, present and file herewith their assignment of errors, as to which matters and things they say that the decree entered herein on the 15th day of November, 1918, is erroneous in this, to-wit:

1.

The Court erred in reversing the decree of the District Court sustaining the motion to dismiss the bill in said case on the various grounds alleged therein, both in its original shape, and as amended, and in not affirming said decree of said District Court, dismissing said bill.

2.

The original bill was based on the contract which on its face established the relation of seller and buyer between the plaintiff and defendant banks, and negatived exclusively the existence of the relation of Debtor and Creditor between said banks, and the District Court so held; and the Circuit Court of Appeals erred in not sustaining this decree of the Court and dismissing the bill.

3.

The original bill as amended alleged a state of facts, which taken in connection with the allegations of the original bill, established the relation of seller and buyer between the plaintiff and defendant banks, and negatived absolutely the existence of a relation of debtor and creditor between said banks, and the District Court so held; and

the Circuit Court of Appeals erred in reversing this decree of the District Court, and in not sustaining said decree, dismissing said bill as amended.

4.

The original bill, as well as said bill when amended, established the fact that in the contract considered by itself on which the original bill was based, as well as when the said contract is considered in connection with the conduct of the parties acting thereunder, as set forth in the amendment, the Commercial National Bank conveyed to the American National Bank every particle of its property of every character and description, and delivered to it actual possession of the same, and in addition thereto agreed and obligated itself to liquidate and retire from business, and cease to exist as a corporation, and in connection therewith, turn over all of its business to the American National Bank, and in pursuance of said agreement and obligation, the American National Bank agreed at the same time under said contract, and did by the aid of the officers of the Commercial National Bank, completely take over every particle of property owned by the latter bank, as well as its business, and as a result thereof, the Commercial National Bank was placed under the terms of the contract where it was utterly penniless, and where it could not exist as a debtor of the American National Bank or anyone else, in as much as it had nothing on which to predicate its existence, and the District Court so held, and dismissed the bill as amended, and the Court of Appeals erred in reversing said decree of dismissal.

5.

The Circuit Court of Appeals erred in holding in said decree that the bill as amended established the relation of creditor and debtor between the plaintiff and defendant banks.

6.

And the Court also erred in its judgment of November 5, 1921, in affirming the decree of the District Court, and in this, to-wit:

7.

The Court erred in holding under the bill and evidence that plaintiff was entitled to recover of the defendant.

8.

The Court erred in holding under the bill and evidence that the American National Bank was a creditor of the Commercial National Bank.

9.

The Court erred in not holding that the evidence showed that the American National Bank was a purchaser of the assets of the Commercial National Bank.

10.

The Court erred in holding that the transactions between the two banks did not constitute a sale of the assets of the Commercial National Bank, but did constitute the American National Bank the sole creditor of the Commercial National Bank.

11.

The Court erred in holding under the evidence that after August 1, 1914, the Commercial National Bank continued in active operation.

12.

The Court erred in not holding that under the evidence adduced before the Master, the Commercial National Bank conveyed and delivered to the American National Bank all its property, and ceased to do business and to exist as a corporation; and, therefore, was not in a position to become a debtor to the American National Bank or anyone else.

13.

The Court erred in holding that the contract and various resolutions and the conduct of the parties throughout are all consistent with the theory of a loan.

Wherefore, appellants pray that said judgments and decrees of said Circuit Court of Appeals may be reversed in all things.

CHAS. L. BARTLETT,
R. L. BERNER,
J. E. HALL,
WARREN GRICE,
R. L. ANDERSON,
CHAS. J. BLOCH,
AUG. O. B. SPARKS,
CHARLES AKERMAN,
*Attorneys for Appellants.*

Presented this January 4, 1922.

NATHAN P. BRYAN,
*U. S. Circuit Court Judge, Fifth Circuit.*

*Appeal Bond.*

Filed January 9th, 1922.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3722.

W. H. HIGHTOWER et al., Appellants,
v.
AMERICAN NATIONAL BANK OF MACON, Appellee.

Know all men by these presents: That we, W. H. Hightower, B. A. Wright, C. H. Andrew, Mrs. Annie Inman Grant, John W. Grant, W. C. Winburn, Leon S. Dure, C. M. Adams, Guy Armstrong, R. E. Hightower, A. B. Hinkle, W. T. Anderson, N. Z. Anderson, A. J. Sams, R. W. Dickerson, Mary R. Huguenin, as Executrix of will of E. D. Huguenin, P. W. Pullin, Mrs. Rubie Stafford, Oscar Bradley, Kenneth W. Dunwody, W. Elliot Dunwody, W. E. Dunwody, Evelyn W. Hubbell, George W. Hubbell, Macon Cooperage Company, R. C. Ries, Executor of will of F. C. Ries, W. A. McKenna, Atlantic National Fire Insurance Company, J. F. Lewis, Mrs. Lamar L. Oglesby, W. D. Wells, W. A. Roush, W. A. Roush, Agent, L. O. Benton & Brother, L. O. Benton and J. S. Malone, former stockholders of Southern Securities & Financing Company, L. O. Benton, L. O. Benton & Brother, J. W. Payne, Mrs. Bessie N. Proudfit, Executrix of will of Alexander Proudfit, Miss Meta Isabel Pace, Joel A. Smith, R. L. Smith, A. M. Stewart, E. A. Middlebrooks, J. S. Coon, Ed. A. Sheridan, W. A. Little and Mrs. Hattie J. Lane, Executrix of will of A. W. Lane, as Principals, and Mrs. Julia Dure as Surety, are held and firmly bound unto the American National Bank of Macon, Georgia, in the sum of Five Hundred Dollars ($500), to be paid to said American National Bank of Macon, Georgia, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seal- and dated — day of January, A. D., 1922.

Whereas, the Appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decrees rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 5th day of November, 1921, and on the 15th day of November, 1918.

Now, therefore, the condition of this obligation is such that if the said Appellants shall prosecute said appeal to effect, and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

W. E. DUNWODY.
J. F. LEWIS,
By AUG. O. B. SPARKS,
*As his Atty. at Law.*

MRS. LAMAR L. OGLESBY,
By AUG. O. B. SPARKS,
*As her Atty. at Law.*

B. A. WRIGHT,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

C. H. ANDREW,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

MRS. ANNIE INMAN GRANT,
By CHAS. J. BLOCH,
*As her Atty. at Law.*

JOHN W. GRANT,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

W. T. ANDERSON,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

A. J. SAMS,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

R. W. DICKERSON,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

P. W. PULLIN,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

MRS. RUBIE STAFFORD,
By CHAS. J. BLOCH,
*As her Atty. at Law.*

C. M. ADAMS,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

A. B. HINKLE,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

JOEL A. SMITH,
By CHAS. J. BLOCH,
*As his Atty. at Law.*

W. H. HIGHTOWER,
By C. L. BARTLETT,
*Atty. at Law.*

W. C. WINBURN,
By C. L. BARTLETT,
*Atty. at Law.*

R. E. HIGHTOWER,
By C. L. BARTLETT,
*Atty. at Law.*

W. A. LITTLE,
By CHAS. AKERMAN,
*His Attorney of Record.*

KENNETH W. DUNWODY,
By C. L. BARTLETT,
*Atty. at Law.*

W. ELLIOTT DUNWODY,
By C. L. BARTLETT,
*Atty. at Law.*

EVELYN W. HUBBELL,
By C. L. BARTLETT,
*Atty. at Law.*

GEO. W. HUBBELL,
By C. L. BARTLETT,
*Atty. at Law.*

MACON COOPERAGE CO.,
By C. L. BARTLETT,
*Atty. at Law.*

F. C. RIES,
*Executor,*
By C. L. BARTLETT,
*Atty. at Law.*

W. D. WELLS,
By C. L. BARTLETT,
*Atty. at Law.*

W. A. ROUSH,
By C. L. BARTLETT,
*Atty. at Law.*

W. A. ROUSH,
*Agent,*
By C. L. BARTLETT,
*Atty. at Law.*

L. O. BENTON & BROTHER,
By C. L. BARTLETT,
*Atty. at Law.*

L. O. BENTON,
By C. L. BARTLETT,
*Atty. at Law.*

J. S. MALONE,
By C. L. BARTLETT,
*Atty. at Law.*

L. O. BENTON,
*(Former Stockholders of Southern Securities & Financing Co.),*
By C. L. BARTLETT,
*Atty. at Law.*

J. W. PAYNE,
By C. L. BARTLETT,
*Atty. at Law.*

MRS. BESSIE N. PROUDFIT,
*Extrx.,*
By C. L. BARTLETT,
*Atty. at Law.*

MISS META ISABEL PACE,
By C. L. BARTLETT,
*Atty. at Law.*

R. L. SMITH,
By C. L. BARTLETT,
*Atty. at Law.*

E. A. MIDDLEBROOKS,
By C. L. BARTLETT,
*Atty. at Law.*

J. S. COON,
By C. L. BARTLETT,
*Atty. at Law.*

ED. A. SHERIDAN,
By C. L. BARTLETT,
*Atty. at Law.*

ATLANTIC NATIONAL FIRE INSURANCE CO.,
By R. L. ANDERSON,
*Its Attorney at Law.*

W. A. McKENNA.
MRS. MARY R. HUGUENIN,
*As Executrix of E. D. Huguenin,*
By R. C. JORDAN,
*Atty. of Record.*

MRS. HATTIE J. LANE,
*As Extrix. of A. W. Lane,*
By R. C. JORDAN,
*Atty. of Record.*

GUY ARMSTRONG,
*By His Atty. at Law, Warren Grice.*
OSCAR BRADLEY,
By C. L. BARTLETT,
*Atty. at Law.*

A. M. STEWART,
By CHAS. AKERMAN,
*His Attorney of Record.*

LEON S. DURE.
MRS. JULIA DURE.

The foregoing bond is approved, this 4th day of January, 1922.
NATHAN P. BRYAN,
*United States Circuit Judge, Fifth Circuit.*

STATE OF GEORGIA,
*County of Bibb:*

Personally came Mrs. Julia Dure, the Surety named in the foregoing bond, who being first duly sworn says that she is a resident and freeholder of the County of Bibb, State of Georgia, and is worth at least the sum of Ten Thousand Dollars over and above all her just debts and liabilities, exclusive of property exempt from execution.

MRS. JULIA DURE.

Subscribed and sworn to before me this 31st day of December, 1921.

[SEAL.] J. M. DE BORDE,
*Notary Public, Bibb County, Ga.*

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 1157 to 1196 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3722, wherein W. H. Hightower, et als., are appellants, and the American National Bank of Macon is appellee, as full, true and complete as the originals of the same now remain in my office; and also of the opinion of said Circuit Court of Appeals in re American National Bank of Macon, appellant, vs. Commercial National Bank of Macon, et als., No. 3240, included therein as directed in the præcipe of counsel for the respective parties.

I further certify that the pages of the printed record numbered from 1 to 1156 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 14th day of January, A. D. 1922.

[Seal of United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
*Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.*

In the United States Circuit Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA,
*Fifth Circuit:*

To the American National Bank of Macon, Georgia:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington in the District of Columbia, within thirty days from the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, wherein W. H. Hightower, B. A. Wright, C. H. Andrew, Mrs. Annie Inman Grant, John W. Grant, W. C. Winburn, Leon S. Dure, C. M. Adams, Guy Armstrong, R. E. Hightower, A. B. Hinkle, W. T. Anderson, N. Z. Anderson, A. J. Sams, R. W. Dickerson, Mary R. Huguenin, as Executrix of will of E. D. Huguenin, P. W. Pullin, Mrs. Rubie Stafford, Oscar Bradley, Kenneth W. Dunwody, W. Elliot Dunwody, W. E. Dunwody, Evelyn W. Hubbell, George W. Hubbell, Macon Cooperage Company, R. C. Ries, Executor of will of F. C. Ries, W. A. McKenna, Atlantic National Fire Insurance Company, J. F. Lewis, Mrs. Lamar L. Oglesby, W. D. Wells, W. A. Roush, W. A. Roush, Agent, L. O. Benton & Brother, L. O. Benton and J. S. Malone, former stockholders of Southern Securities & Financing Company, L. O. Benton, L. O. Benton & Brother, J. W. Payne, Mrs. Bessie N. Proudfit, Executrix of will of Alexander Proudfit, Miss Meta Isabel Pace, Joel A. Smith, R. L. Smith, A. M. Stewart, E. A. Middlebrooks, J. S. Coon, Ed. A. Sheridan, W. A. Little and Mrs. Hattie J. Lane, Executrix of will of A. W. Lane, are Appellants, and you are Appellee, to show cause, if any there be, why the decree rendered against the said Appellants, as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Nathan P. Bryan, Judge of the United States Circuit Court of Appeals for the Fifth Circuit.
This 4th day of January, A. D., 1922.

NATHAN P. BRYAN,
*United States Judge, Fifth Circuit.*

Service acknowledged this January 5, 1922.

ORVILLE A. PARK,
GEORGE S. JONES,
*Attorneys for Appellee.*

[Endorsed:] No. 3722. In the United States Circuit Court of Appeals, Fifth Circuit. W. H. Hightower et als., Appellants, versus American National Bank of Macon, Appellee. Citation on Appeal to the Supreme Court of the United States, and Acceptance of Service thereof. U. S. Circuit Court of Appeals. Filed Jan. 9, 1922. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 28,688. U. S. Circuit Court Appeals, 5th Circuit. Term No. 733. W. H. Hightower, B. A. Wright, C. H. Andrew, et al., appellants, vs. The American National Bank of Macon, Georgia. Filed February 1st, 1922. File No. 28,688.

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# SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1922

No. 264.

W. H. HIGHTOWER, *et al.*
Appellants

VERSUS

AMERICAN NATIONAL BANK OF MACON
Appellee

*Appeal from the Circuit Court of Appeals for the Fifth Circuit.*

## BRIEF AND ARGUMENT FOR APPELLANTS

### I.

### STATEMENT.

On December 22, 1916, American National Bank of Macon (in economy referred to as American) in the District Court of the United States for the Southern District of Georgia, filed its bill of complaint against C. M. Adams and others as shareholders of Commercial National Bank (briefly referred to as Commercial), the bill being set forth in the record at pages 1-26 inclusive.

This original bill averred the creditor-debtor relationship, within the meaning of the National Banking Act, to exist between the American and the Commercial, by reason of the provisions of certain articles of agreement assented to by the Directors of American and the Directors of Commercial on August 1, 1914, and subsequently reduced to writing and executed by the officers of the two banks. This

written agreement was exhibited to the bill and is shown at pages 20-26 inclusive, of the record.

1.

It was averred by the American, that on July 31, 1914, Commercial applied to American for a loan to enable it to meet its obligations and to pay and satisfy its depositors.

2.

American agreed to assume and to pay all the liabilities of Commercial.

3.

Commercial, through its Board of Directors, transferred, assigned and conveyed to American all the assets of Commercial "of every kind and character," including:

(a) Cash on hand.
(b) Bills Receivable.
(c) Stocks.
(d) Bonds.
(e) Securities.
(f) Banking house and other real estate, and
(g) All other assets,

as security for the sums advanced and to be advanced by the American, according to the agreement of the American.

The transfer which was actually made, in pursuance of the agreement of the two banks, is shown in section one of the written contract at top of page 22 of the Record, being in the form of an absolute deed, the grant and transfer being "in fee simple and forever" and with full and formal warranty of title.

4.

Pursuant to said agreement, the American "took charge of all of said assets so transferred to it" as security, on August 3, 1914, (Monday), and "from and after that date paid in due coures all the depositors of the Commercial, its bills payable and other liabilities."

5.

That the written agreement was approved by more than two-thirds of shareholders of Commercial at a called meeting; and similarly ratified at a second meeting held September, 30, 1914.

6.

When the American took charge of Commercial's assets, it proceeded to reduce same to cash and to apply the amounts received to reimburse itself for the amounts it had advanced in payment of liabilities of Commercial which it had assumed.

7.

The aggregate of the amounts paid out by American to discharge the liabilities of the Commercial exceeded by $320,000 the realization upon the assets of Commercial together with value of remnant assets, exceeding by $20,000., and more, the capital stock of Commercial.

8.

Judgment against the defendant shareholders of Commercial "equally and ratably and not one for another," were asked, though no judgment against the Commercial was in the original bill prayed for.

Trespass will not be indulged to the extent of detailed analysis of the written articles of agreement exhibited to the original bill. However, it will be allowed that the general features of the written contract should here be adverted to.

1.

The first preamble of the contract related that Commercial's Directors on August 1, 1914, adopted resolutions authorizing the officers to commence proceedings for liquidation under Sections 5220 and 5223, Revised Statutes (the former relating to liquidation and the latter to con-

solidation of banks), for consolidation with American, and to transfer to American all assets of Commercial.

2.

This first preamble further relates that the resolution of Commercial's Directors provided that American "should take over the business" of Commercial, liquidate the assets, and account to the *shareholders* of the Commercial (not the Commercial itself) for any overplus that might remain after paying depositors and other creditors of Commercial and expense of realizing on assets.

3.

This first preamble relates that the resolution of Commercial's Directors authorized the officers to make such contract (only) as would carry out the general purpose of the resolution.

4.

The second preamble relates that the American Directors adopted a resolution assuming for the American the payment of Commercial's liabilities, "upon condition that the assets of" Commercial should be transferred to American "sufficient in amount and in value *in the estimation* of the officers of the American" to fully protect and secure the American in its undertaking or enterprise.

5.

The contract then relates that the preliminaries and *conditions* had been complied with and that the assets of Commercial had been delivered to American.

6.

The first section of the contract is an absolute transfer of all Commercial's assets, in fee simple and with full warranty of title.

7.

The second section obligates the officers of Commercial in contemplation of liquidation under sections 5220, 5221,

and 5223, to call a meeting of Commercial's shareholders to be held on August 12, 1914, and to procure resolutions at such meeting for liquidating the Commercial "and consolidating same with American" by the "purchase of the assets of Commercial" by the American, but without providing for stock to be issued to the shareholders of Commercial.

8.

The third section obligated Commercial to procure proper resolutions appointing American liquidating agent for Commercial.

9.

The fourth section obligated Commercial to maintain its corporate existence until final liquidation (a situation required by law), and obligated Commercial's officers to execute and deliver such further writings as might be required to effectuate the transfer of assets, the liquidation of the Commercial, "and (the performance of) this contract."

10.

By section five of the contract the American assumed all debts of Commercial and assumed the redemption of the circulating notes of the Commercial. (This was not an agreement to assume the circulating notes at some future time, and upon some future contingency, the assumption being necessary under 5222 and 5223, but was a present assumption, an accomplished fact).

11.

By section six it is provided, that American would act as liquidating agent of Commercial, would receive 7% interest on amounts paid out by it in ,"advance" of realizing on Commercial asets and would pay over the excess of assets over liabilities to the *shareholders* of Commercial.

The second paragraph of section six of the contract at page 25 of the record, clearly indicates that the parties, and particularly the American, anticipated that the proposed liquidation and consolidation by purchase, without stock issue, might be interrupted by one of two events, to-wit, the refusal of the shareholders of Commercial to vote for liquidation and ratification of the sale purchase, or the intervention of some Court decree made before the transaction could be ratified by the shareholders. In the light of this possibility, this second paragraph of section six provided:

> "It being distinctly agreed and understood that in the event the said liquidation should be interrupted or discounted for any reason beyond the control of said American National Bank, then and in that event said American National Bank shall and does hold all of the assets of said Commercial National Bank as security for the advances which may have been made by it, up to the time such liquidation may be so discontinued."

The attention of the Court is pointedly directed to the fact that this part of the contract expresses *the* one event in which the American is to hold the Commercial's assets as security, excludes reasonably every other event, and makes the definitely agreed contract of sale-purchase for consolidation defeasible only by an interruption of the operation of the contract of purchase by "any reason beyond the control of the American." In every other event the contract of sale-purchase for consolidation would stand.

The event involved was not *a condition precedent* to the contract of sale-purchase, but was *a condition subsequent* which would transform the absolute sale into a pledge for security.

It is to be observed that under the definite provisions of Section 5223 of Revised Statutes, absolutely applied, the American would have definitely valued the assets of the Commercial and paid over to Commercial or its shareholders the excess of such valuation over the liabilities. The American did not desire to bind itself by any such definite valuation, but preferred the safer—but legally equivalent—course of having that value determined by a liquidation. It was because of this fact that liquidation was necessary.

13.

The last paragraph of section six of the contract, bottom of page 25 of Record, provided that neither the resolutions of the respective Boards of Directors of the two banks, nor the contract itself, should "*relieve* the Shareholders" of Commercial from their legal liability to respond in the event it might be necessary to have recourse upon such shareholder's liability for any deficit after exhausting the other assets of Commercial in the payment of its liabilities.

## MOTIONS TO DISMISS FILED.

The defendant shareholders, conscious of their own understanding of the transaction between the banks, that the contract was one having for its principal purpose the purchase of Commercial assets by American for consolidation without issue of stock in American, knowing that it was their understanding that the American was to take over and did take over all assets of Commercial as well as the business of Commercial on the first banking day after August 1, 1914, knowing that it was their understanding that the officers of the American had examined and valued the assets of the Commercial and had judged these assets sufficient to pay off the liabilities of the Commercial; know-

ing that the liquidation of the Commercial was resorted to for the sole purpose of relieving the necessity of an immediate and precise valuation of Commercial assets as contemplated by Section 5223 of Revised Statutes; knowing that it was their understanding that the transaction was one of purchase-sale except in the one contingency that the plan adopted should be interrupted by some reason beyond the control of the American, a contingency which did not occur; believing that the written contract bore unmistakable evidences of purchase-sale, rather than of pledge; and being advised that in order to enforce the Statutory liability of shareholders of a National Bank it was incumbent upon the plaintiff to present a case clear as a cameo, whereas at best there was here presented a gargoyle. . with this knowledge, belief and advice, the defendants filed the motions to dismiss shown in the Record at pages 27—53 inclusive. In these motions, among other contentions, it was asserted that upon the face of the Record,

1

The contract between the two banks was one of purchase and sale, purchase by the American of the business and assets of the Commercial, for the purpose of consolidation, but without issue of stock to shareholders of Commercial, but in lieu thereof an obligation on the part of American to pay over to shareholders of Commercial excess of realization over liabilities assumed, it being contended by the defendants that the American's officers had satisfied themselves as to the conditions mentioned in the second preamble of contract, to-wit, that the assets of Commercial were sufficient in amount and value to protect the venture.

2

The contract evidenced an intention that the assets were considered as security for amounts paid out by American on-

ly in the event that the handling or administration by American should be interrupted for any reason beyond the control of the American.

3

The contract and averments of the petition did not assert a contract, debt or engagement within the meaning of the National Banking Laws.

4

The contract and the averments of the petition showed as the sole creditor the American which had taken over, in entirety, the assets and business of the Commercial, effective August 1—3, 1914, was the liquidating agent of the Commercial, as well as the purchaser, and that any deficit of assets as to liabilities resulting from such liquidation could not create a liability upon the shareholders of the Commercial under the National Banking Laws.

5

That there cannot be a contract, debt or engagement, as contemplated by the National Banking Laws, created by a transaction which of necessity and instantly destroys the life of the banking institution the shareholders of which are sought to be bound.

6.

The contract and petition did not present such a clear case as would entitle plaintiff to recover.

## THE FIRST OPINION OF THE TRIAL JUDGE

Upon considering these motions, Judge Evans, on November 8, 1917, rendered an opinion which is set forth at pages 70—78, inclusive, of the Record.

Before orders could be taken sustaining the motions to Dismiss,

## PLAINTIFF AMENDED THE BILL.

This Amendment, provoked by the irresistable logic of Judge Evans' opinion and intended to meet the manifest and manifold weaknesses in plaintiff's case as originally presented, is found at pages 53—66, inclusive, of the Record. By the amendment, the plaintiff

1

Exhibited the full texts of the Resolutions of Commercial Directors and American Directors, respectively, dated August 1, 1914,—marked Exhibit "B" and "C", respectively, and shown at pages 60-62, inclusive, of Record.

(It is to be noted that the written agreement of August 11, 1914, by epitome of these resolutions makes its own construction and import of them; and first epitomizes the Commercial resolution. Despite this, as will be seen, the master lays great store by a recital of the American resolutions which is disregarded in the agreement, and lays much stress upon the fact that the American resolution was first adopted.)

2

Quoted certain provisions found in the full text of the resolution.

3

Asserted that pursuant to these resolutions the Commercial's assets were transferred to the American as collateral and not as cash.

4

Asserted that the resolutions had contemplated that notes of the Commercial should be taken (if the tranaction was that of debtor-creditor and not that of seller-purchaser), but that it was found impracticable to take notes for money advanced by the American.

Therefore it was agreed by the officers and Finance Com-

mittee of Commercial with the officers of American that the indebtedness should be carried as an overdraft and should be secured by the assets transferred.

5.

Asserted that for "some two weeks" after the agreement of August 11, 1914, Commercial remained in the banking business as an active banking institution.

6.

Asserted that American did not purchase or accept any assets of Commercial as cash except its banking building, which the American purchased by agreement with Commercial's Liquidation Committee as shown by Exhibit "D", found at pages 62-63 of Record (a resolution which was not proven.)

7.

Asserted that American continued to carry "indebtedness" as an overdraft, which on November 22, 1916, amounted to $320, 102.82.

Also, that American included this overdraft in its statement of assets to the Comptroller of Currency; and that Commercial reported the overdraft as an indebtedness to American.

8.

Plaintiff exhibited full copy of resolutions of shareholders of Commercial adopted at the meeting on September 30, 1914, placing Commercial in voluntary liquidation and ratifying the contract between the two banks. These resolutions are exhibit "E" and "F", and appear at pages 63-66 of Record.

9.

Plaintiff amended prayers of original bill by praying judgment against Commercial for full amount of alleged deficit.

## SECOND OPINION OF JUDGE EVANS

The defendant's motions to dismiss were renewed after the amendment to the bill had been allowed, pages 67-69 of Record.

Thereupon Judge Evans rendered a second opinion which is shown at pages 79-83 of Record, holding that the bill as amended should be dismissed on the said motions and an order was taken accordingly, as shown at bottom of page 83 of Record.

## APPEAL AND REVERSAL

Upon appeal made by plaintiff, American, from the said order of dismissal the Circuit Court of Appeals reversed the District Court, as show by the mandate at pages 84-85 of Record.

## MOTIONS OVERRULED

Thereupon on January 14, 1919, the District Court, in obedience to the mandate of the Circuit Court of Appeals, overruled the motions to dismiss and ordered that the cause proceed according to the rules and practices. Page 87 of Record.

## ANSWERS FILED

Thereupon the defendants filed answers to the bill as amended, the answers being shown at pages 87-146 of the Record.

## REFERENCE TO MASTER

In February 20, 1919, the cause was referred to J. N. Talley, Standing Master, with directions to hear evidence and report his findings of fact and conclusions of law upon certain specified issues raised by the pleadings, as well as "any other issues which are raised by the pleadings" or by subsequent amendments. See pages 147-150 of Record.

## EVIDENCE TAKEN

Thereupon throughout a long period of time, in a great number of hearings, the parties introduced evidence, the

larger part of which, in the interest of American, was to establish the averments of the amendment to the bill, and in the interest of defendants to disaprove the averments of the amendment.

There was comparatively little controversy as to the averments of the original bill, such as there was relating, in the main, to plaintiff's construction of the document. The efforts of both plaintiff and defendants were directed to the additional subject matter in the amendment, the one seeking to establish, the other to destroy it.

This evidence is shown in the Record at pages 521-1106 inclusive.

## MASTER'S REPORT

After the evidence was taken, the Master, after hearing arguments, in wonderful patience, made his findings of fact and conclusions of law—pages 150-295 of Record, reporting as the ultimate conclusion that plaintiff was entitled to have judgment as prayed.

## EXCEPTIONS

Exceptions to the Master's Report were duly filed by defendants, as shown at pages 296-510 of Record.

## MASTER'S REPORT CONFIRMED

As shown at pages 510-511 of Record, the Master's Report was confirmed by the Trial Judge.

## FINAL DECREE

Was entered thereupon on September 3, 1920, as shown at pages 511-521 of Record.

An appeal was entered from the order of the Judge confirming the Master's Report, and the Court of Appeals for the Fifth Circuit in an opinion which may be found at pages 1171—1176 of the Record, affirmed the trial court. Whereupon this appeal was sued out and allowed.

## ASSIGNMENT OF ERRORS.

1

The court erred in reversing the decree of the District Court sustaining the motion to dismiss the bill in said case on the various grounds alleged therein, both in its original shape, and as amended, and in not affirming said decree of said District Court, dismissing said bill,

2.

The original bill was based on the contract which on its face established the relation of seller and buyer between the plaintiff and defendant banks, and negatived exclusively the existence of the relation of Debtor and Creditor between said banks, and the District Court so held; and the Circuit Court of Appeals erred in not sustaining this decree of the Court and dismissing the bill.

3.

The original bill as amended alleged a state of facts, which taken in connection with the allegations of the original bill, established the relation of seller and buyer between the plaintiff and defendant banks, and negatived absolutely the existence of a relation of debtor and creditor between said banks, and the District Court so held; and the Circuit Court of Appeals erred in reversing this decree of the District Court, and in not sustaining said decree, dismissing said bill as amended.

4.

The original bill, as well as said bill when amended, established the fact that in the contract considered by itself on which the original bill was based, as well as when the said contract is considered in connection with the conduct of the parties acting thereunder, as set forth in the amendment, the Commercial National Bank conveyed to the American National Bank every particle of its property of every character

and description, and delivered to it actual possession of the same, and in addition thereto agreed and obligated itself to liquidate and retire from business, and cease to exist as a corporation, and in connection therewith, turn over all of its business to the American National Bank, and in pursuance of said agreement and obligation, the American National Bank agreed at the same time under said contract, and did by the aid of the officers of the Commercial National Bank, completely take over every particle of property owned by the latter bank, as well as its business, and as a result thereof, the Commercial National Bank was placed under the terms of the contract where it was utterly penniless, and where it could not exist as a debtor of the American National Bank or anyone else, inasmuch as it had nothing on which to predicate its existence, and the District Court so held, and dismissed the bill as amended, and the Court of Appeals erred in reversing said decree of dismissal.

5.

The Circuit Court of Appeals erred in holding in said decree that the bill as amended established the relation of creditor and debtor between the plaintiff and defendant banks.

6.

And the Court also erred in its judgment of November 5, 1921, in affirming the decree of the District Court, and in this, to-wit:

7.

The Court erred in holding under the bill and evidence that plaintiff was entitled to recover of the defendant.

8.

The Court erred in holding under the bill and evidence that the American National Bank was a creditor of the Commercial National Bank.

9.

The Court erred in not holding that the evidence showed that the American National Bank was a purchaser of the Commercial National Bank.

10.

The Court erred in holding that the transactions between the two banks did not constitute a sale of the assets of the Commercial National Bank, but did constitute the American National Bank the sole creditor of the Commercial National Bank.

11.

The Court erred in holding under the evidence that after August 1, 1914, the Commercial National Bank continued in active operation.

12.

The Court erred in not holding that under the evidence adduced before the Master, the Commercial National Bank conveyed and delivered to the American National Bank all its property, and ceased to do business and to exist as a corporation; and therefore, was not in position to become a debtor to the American National Bank or anyone else.

13.

The Court erred in holding that the contract and various resolutions and the conduct of the parties throughout are all consistent with the theory of a loan.

## ARGUMENT AS TO CORRECTNESS OF THE DISTRICT COURT'S RULING IN SUSTAINING THE MOTIONS TO DISMISS THE BILL AS AMENDED AND AGAINST THE DECISION OF THE CIRCUIT COURT OF APPEALS IN REVERSING SUCH RULING.

In the main aspects of the questions involved in this case, the adjudicated cases which are really or apparently con-

trolling or illuminating are few in number. In fact, it may be stated that there are only three cases which appear or are claimed to be of great value, to-wit:

Richmond v. Irons, 121 U. S. 27.

Schofield v. Bank, 97 Fed. 282.

Wyman v. Wallace, 201 U. S. 230.

Beyond a consideration of these cases, together with certain others incidentally related, the views and contentions herein presented must of necessity be by way of analyzing the particular features of the instant case, and of presenting argument upon these individual facts and features.

I.

The original petition in this case, when construed appropriately, shows the following:

The American National Bank of Macon and the Commercial National Bank of Macon, hereinafter styled respectively for brevity the American and Commercial, were banking institutions chartered under the National Banking Law, each doing a general banking business at Macon, Georgia, up to and including August 1, 1914.

On July 31st, 1914, the Commercial found it difficult, if not impossible to meet its obligations and satisfy its depositors. (3d par. of Petition, p. 2 of Record.)

After some negotiations, an agreement was reached by and between the Commercial and the American, to which the Commercial had applied for a loan of money on July 31st, 1914. The agreement so reached was embodied in resolution of the respective Boards of Directors of the two institutions, each made and dated August 1, 1914. These resolutions are recited in "Exhibit A" to the petition (pp. 16 and 17 of Record). The resolutions were substantially as follows:

1. The resolution of the Board of Directors of the Commercial authorized the officers of the Commercial

to commence proceedings for the *liquidation* of the Commercial under sections 5220 and 5223 of U. S. Revised Statutes for *consolidation* with the American; and further authorized said officers to transfer to the American all the assets of the Commercial, said assets being so transferred and assigned by the said resolution. The exact words of the resolution of the Directors of the Commercial are not in the original petition exhibited to the Court for inspection and minute construction, but it is recited in "Exhibit A" (which is a contract between the two banks, dated August 11, 1914, and which will be hereinafter referred to in detail), that the transfer of said assets to the American was made in order fully to protect and secure the American for all moneys advanced or to be advanced by the American in the assumption and payment of the liabilities of the Commercial, as shown by list attached and exhibited.

The incongruity or anachronism is possibly immaterial in the view which we take of the question for decision; but it is not amiss to observe that, in view of the statement in the petition, paragraph four (page 3 of Record), that the American did not commence liquidating the assets and ~~is charging that~~ liabilities of the Commercial would hardly have secured the American by resolution dated August 1, 1914, for all moneys (then) *advanced* by the American. We are impressed that the recitals of the contract referred to were rather a construction made by the counsel who drew that contract, than an adoption of the words of the resolution in question.

The said resolution of the Directors of the Commercial further provided that the American *should take over the business* of the Commercial, liquidate its

assets, and account to the shareholders of the Commercial for any overplus which might remain after paying the depositors and other indebtedness of the Commercial, in full; as well as the expense of realizing on the assets so transferred.

The resolution further authorized the officers of the Commercial to make such contract with the American *as might be necessary or appropriate in order to carry out the general purposes* of the resolution.

2. The Directors of the American, at a meeting duly and regularly called, adopted a resolution whereby the American assumed the payment of the valid claims of depositors of the Commercial and other liabilities set out in the list of liabilities exhibited.

The sole condition which was exacted for the assumption by the American of the liabilities of the Commercial, as provided in said resolutions, was, that the assets of the Commercial should be transferred to the American sufficient in amount and in value, *in the estimation of the officers* of the American, fully to protect and secure the American for any and all amounts, *payment* of which was assumed by the American.

The officers of the American were authorized to make such contract *as might be necessary to carry out the purposes* of this resolution.

These two resolutions composed the transaction between the two banks, resulting in the suspension of the Commercial on August 1, 1914, and the commencement of its actual liquidation on August 3, 1914. (Par. 4, p. 3 of Record.)

These resolutions did not forecast or contemplate any contract between the banks, to be executed by the officers, save such as would "carry out the general purposes" of the resolutions (adopting the reputed words of the Commercial) or "carry out the purposes of the resolution" (using the

words of the American). It is proper, and even necessary to construe these two resolutions in *pari materia*. Certain it is that the American cannot complain if predominance is given its resolution by construing the reputed language of the Commercial resolution of the American. Pursuing this course, it becomes at once apparent that the reputed words of the Commercial resolution, "in order to fully protect and secure said American National Bank," are to be construed with the correlative provision of the American resolution "upon condition that the assets of the Commercial National Bank should be transferred to the American National Bank sufficient in amount and in value *in the estimation of the owners of the American National Bank to* fully protect . . . the American."

The contract of August 11, 1914, which plaintiff exhibits to his petition and makes a part thereof (pp. 16-21 of Record) plainly alleges that the preliminaries and conditions in the resolutions had on August 11, 1914, been complied with. In other words, previously to the making of the contract of August 11, 1914, *the condition* mentioned in the resolution of the American had been complied with, which is to say that "the assets of the Commercial National Bank sufficient in amount and in value in the estimation of the officers of the American National Bank" had been transferred and delivered to the American.

The fourth paragraph of the petition (p. 3 of Record) shows this to be true, that paragraph alleging that "pursuant to said agreement, the plaintiff took charge of all assets so transferred to it by the said (Commercial National) Bank . . . on the 3d day of August, 1914, and from and after that date it paid in due course as called upon." etc.

The first day of August, 1914, fell on Saturday. It is obvious that the agreement embodied in the resolutions of

August 1, 1914 contemplated and resulted in a cessation banking business on the part of the Commercial, or a suspension of its banking business. The liquidation of its assets and the discharging of its liabilities began Monday, August 3, 1914. Its commercial existence then ended. Its usual and ordinary course of business was completely run when it closed its doors Saturday, August 1, 1914.

On August 11, 1914, ten days after the agreement was reached between the two banks, and eight days after the Commercial was taken, root, trunk and branch by the American, there was executed by the two banks a contract which is exhibited to the petition and which is alleged to have been ratified by more than two-thirds of the shareholders of the Commercial. It is to be assumed that this alleged ratification was on August 12, 1914, the date referred to in Section II of the contract. This was a called meeting of the shareholders, as is plainly shown, the call having been made, as agreed to be made, "in contemplation of the liquidation of said Commercial National Bank, under sections 5220, 5221 and 5223 U. S. Revised Statutes"; and said call was to be made, and must be presumed to have been made, "to procure proper resolutions by said shareholders and a sufficient majority thereof to comply with the law in such cases made and provided, *liquidating* said Association and *consolidating* same with the American National Bank of Macon by the purchase of the assets of the Commercial National Bank, but without providing for stock in the American National Bank to be issued to the shareholders of the Commercial National Bank" (p. 18 of Record).

The petition alleges that a second special or called meeting of the shareholders was held on September 30, 1914, that meeting having been called, and notice given, for the purpose of placing the Commercial in technical liquidation under sections 5220 and 5221 of U. S. Revised Statutes.

Counsel for defendant, as we understand, concede that the resolutions were prepared and the special stockholders' meetings were held under the forms suggested or prescribed by Pratt's Digest of National Banking Laws.

II.

An analysis of the foregoing statement shows:

1. The Directors of the Commercial, on August 1, 1914, authorized the officers of that association to commence proceedings for the liquidation of the association under sections 5220, 5221, 5223 Revised Statutes, for consolidation with the American.

2. In pursuance of this determination, the officers were authorized to transfer all assets to the Commercial, and turn over the business of the Commercial to the American.

3. The plan contemplated a contract which would carry out the general purpose, and no other.

4. The American, by resolution of its Board of Directors on August 1, 1914, consented to assume the obligations which would be imposed upon it by reason of a consolidation without the issuance of stock, to-wit:

(a) To pay off the liabilities of the Commercial.

(b) To return to the shareholders of the Commercial any surplus of assets after discharging liabilities and paying the expenses of liquidation.

These obligations were based on the *condition* that the assets transferred by the Commercial should be sufficient in amount and in value, not as an actuality but, "in the opinion of the officers of the American," to protect and secure it in the performance of its obligations.

5. All preliminaries and conditions were complied with. The officers of the American were satisfied with

the amount and value of the assets of the Commercial, and the actual transfer was made.

6. The Commercial closed its doors, for all time, on August 1, 1914,; and then ended the *course* of *usual* and *ordinary business*. Using the expression of exact equivalence, it then *suspended* its business.

7. The American, having taken the business and assets of the Commercial, proceeded on Monday, August 3, 1914, to pay off and discharge the liabilities of the Commercial.

8. The officers of the Commercial called a special meeting of its shareholders, to be held August 12, 1914, the meeting being called in "contemplation of 5220, 5221, 5223 of U. S. Revised Statutes, and called for the purpose of procuring proper resolutions by the shareholders . . . *liquidating* said association and *consolidating* same with the American National Bank of Macon by the American." The *de facto* liquidation and consolidation was already in progress, since August 3. This proposed proceeding was to make the action *de jure*. It is not alleged that all shareholders were present or represented at that meeting, so the necessary conslusion is that all were not. It is not alleged that all shareholders voted for the resolutions there adopted, so that the necessary conslusion is that all did not.

It is alleged that at said meeting tht contract "Exhibit A" to the petition, was approved and ratified.

Section II of the contract of August 11, 1914 (p. 18 of Record), provides that this shareholders' meeting would be held on August 12, and that the resolution for liquidation and consolidation would be adopted. Paragraph 6 of the petition shows that the meeting was held. It is to be presumed that a resolution for

liquidation and consolidation was adopted, it being presumed, in the absence of a contrary averment, that everything was done which was planned to be done.

9. On September 30, 1914, another special or called meeting of the shareholders of the Commercial was held, the nature of the call for said meeting not being shown. At this meeting a resolution was adopted technically placing the Commercial in liquidation, that having been begun August 3, 1914. The action of this meeting, insofar as the same was forecast by the resolutions of August 1, 1914, insofar as the same was in harmony with the purpose stated in the call, and insofar as that stockholders'meeting had the right to bind absent stockholders, merely ratified the transfer of August 1, 1914, and liquidation begun on August 3, 1914. It is alleged that the contract, "Exhibit A" to the petition, was at this meeting again ratified and approved . It is not alleged that all stockholders were present or represented, or that all stockholders voted to ratify and confirm the contract. It is therefore necessarily presumed that all were not present or represented and that all did not ratify the contract.

III.

It is conceded that the suit is against all stockholders alike and that all must fail or prevail together in defense dependent upon the transactions here under consideration.

Since it is presumed, from the proper construction of the petition and exhibit, that all shareholders did not ratify and approve the contract of August 11, 1914, the bill should be dismissed as to all defendants, if it ought to be dismissed in behalf of such non-assenting shareholders.

## IV.

It is appropriate at this point to consider the terms and provisions of the contract of August 11, 1914.

A careful study of this contract reveals a distinct line of division immediately following the fifth section. The subsequent provisions seem to have been conceived in a different light. Just what transpired between August 1, 1914, to make it desirable to add certain provisions of section 6 is not a matter of consequence to the Court. Section by section the contract is substantially as follows:

1. Section one evidences absolute transfer and conveyance by the Commercial of all its assets to the American. This provision is in entire harmony with the original design of the action of the Directors.

2. Section two provides for a meeting of shareholders of the Commercial to comply with the formalities of the law for liquidating the Commercial and consolidating same with the American, by the purchase by American of the assets of Commercial, but without issue of stock.

3. This section provides for procuring of resolutions of shareholders of Commercial appointing the American as liquidating agent for the Commercial in "said liquidation for consolidation."

4. Section four provides for maintenance of corporate existence of Commercial until liquidation is complete.

5. Section five imposes upon American the assumption of and duty to pay depositors and all other liabilities of the Commercial as set out in a schedule attached to the contract.

(August 1 to August 11 here interevenes.)

6. Section six provides:

(a) American accepts appointment as liquidating

agent (the ratification by shareholders being then considered a mere formality, just as it was considered August 1, 1914, and August 3, 1914).

(b) Assets of Commercial to be held as security by American for all advances made by it in paying depositors and other libilities as well as actual expenses.

(c) After deducting from proceeds of the assets (1) actual expenses of liquidation, (2) repayment of amounts advanced by American with interest at 7%, (3 discharging liabilities of Commercial not paid by advances, balance to be paid to shareholders of Commercial.

(d) That in the event of enforced interruption, *"then and in that event"* American should hold all said assets as security for the advances made. There is no allegation that there was such interruption, and it is presumed there was none.

(e) That neither resolutions of Directors nor this contract shall relieve shareholders of Commercial from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability, for any deficit which may remain after exhausting the other assets of the Commercial in payment of its liabilities.

V.

It is readily observable that the apparently new features embodied in this afterthought, section six, are:

(f) The language of which provisions, if given the construction contended for by plaintiff's counsel, would be an utter perversion of the language and meaning of the original resolutions. The word "secure" in the resolution of the Directors of the American (p. 17 of Record), construed by the rule *noscitur a sociis*, is

manifestly used to mean "assure" or "insure." It is used along with protect; and the fact that the agreement of the Directors provided for an absolute assumption of liability on the part of the American upon the one *condition* that assets which, in the opinion of its officers, were sufficient in amount and value to fully protect and secure (insure, assure) the American for all payments (not advances) shows that it was never intended to provide a mere loan.

(f) The reservation of 7% interest by the American here provided for, and to which such significance is given by opposing counsel, is not alarming either in the amount or propriety of the deduction or the significence of the fact of deduction.

This provision distinctly gives a right to the American which was not forecast by the original resolution, but the provision does nothing more than increase the *deductions* to be made before there should be a return to the shareholders. Few would have the hardihood to say that this added *deduction* insisted on by the American could change the character of the *original* transaction and impose a liability on the shareholders of the Commercial. The provisions for a return of excess assets to the Commercial shareholders, as originally contemplated, was a fiction, or, at best, a mere formality, but one required in the case of consolidation without the issue of stock.

The provisions for return of surplus to the shareholders of the Commercial was, as stated, a formality, but in view of the fact that such provisions was necessary under the consolidation proposed, it was proper to anticipate every possibility. This provision for deduction of interest was justified in the event of a settle-

ment by return to the Commercial shareholders or a committee for them, of some of the assets in their original form, but charged with interest on money which had been actually paid out by the American.

(c) This provision was inserted in view, forward or backward, of the Birdsey case, a case instituted in Bibb Superior Court and reported in 143 Ga., 627. The word "security" is properly here used to indicate a pledge, under the condition named.

The transfer of the assets was to be a pledge if ("then and in that event") the liquidation was forcibly discontinued.

(d) It is not clear, nor does it matter, what this provision means or what it was intended to cover. It was possibly included to cover a condition wherein claims should arise which were not within the schedule set forth. It does not pretend to create an obligation. It merely provides that the liability is not, by the terms and force of the contracts, relieved. However, the observation here will be sufficient that this liability of a shareholder is one which the statute creates and which the statute imposes in certain situations. Where the statute does not of its own force impose it clearly, it does not exist. It cannot be created or defeated by bargain or contract.

Witters v. Sowles, 35 Fed. 642.

This liability cannot be prolonged.

Richmond v. Irons, 121 U. S. 27.

Schrader v. Bank, 133 U. S. 67.

Ward v. Joslin, 186 U. S. 142, 152.

## VI.

It is not necessary to cite authorities to support the statement that neither railroads, banks nor indeed any other corporations may consolidate or merge, by which consolidation or merger, one corporation strips the other of all its assets, and resultantly of its ability to respond in money or property, to the detriment of the interest of third parties. In such cases the rights and obligations of third parties, resulting from, growing out of or affected by such consolidation, are to be determined by the nature of the transaction between the corporation and not by the details of any contract made by the parties. Our bulk sales law is but a statutory and extended application of this principle. That part of the Act of Georgia of 1907, codified in section 2303 of the Code of 1910, is a further and more apposite declaration of the principle.

A stockholder of the Commercial is a third person as related to the contract between the two banks. His rights and liabilities are governed by the application of legal and equitable rules and principles to the real transaction between the two banks, and not by a refined construction of a contract drawn deliberately, but submitted in the confusion that always attends disaster. All stockholders in their own right are entitled to stand upon the original transaction between the banks, in pursuance of which the Commercial was blotted out of existence. What could a stockholder who attended the meeting of August 12 or September 30, 1914, have gained by miscroscopic scrutiny of the contract as presented, or by objection to any of its added provisions? His bank was gone, its doors were shut and its business as well as its assets had been taken over by the American for liquidation and consolidation. A non-assenting shareholder is

certainly not bound by any added provisions; and, since all stand alike all are as strong as the strongest.

VII.

Either the added provisions of section six of the contract, provisions not forecast by the original agreement under which the bank was taken over, did or did not vary the obligations of the shareholders of the Commercial as embodied in the agreement of August 1, 1914.

If these added provisions did not add such new obligations the bill should, almost by confession of plaintiff's counsel, be dismissed, for there is not in this original agreement the faintest feature of the relation of creditor and debtor, or, looking at the same moon in a different phase, of an express or even implied promise on the part of the Commercial to pay any possible or probable deficit.

If the new provisions of section six did impose added obligtions upon the Commercial and its shareholders, such added provisions are utterly void, for that:

(a) They are repugnant to the plain provisions of the original agreement. This original agreement is the basis of the contract of August 11, and the forepart thereof. If there is a repugnancy betwten sections 1-5, inclusive, or any part thereof, and any of the provisions of section 6, the preceding sections control.

(b) Such added provisions are gratuitous and without consideration. The added provisons do not impose any obligation upon the American, either in character or extent, which it was not previously bound to perform. In fact, section 6 allows the American to make a deduction from assets which was not originally contemplated.

(c) Such provisions were void as related to the shareholders' liability, because they arose and were incorporated into the contract after the course of the usual and ordinary business was permanently suspended on August 1, 1914.

## VIII.

## SHAREHOLDERS CANNOT BE MADE TO RESPOND TO DEBTS CREATED DURING THE PROCESS OF LIQUIDATION.

In any event, the shareholders of the Commercial are not liable to the plaintiff in this case because the alleged overdraft, which is the basis of the suit, was created by advances, alleged to have been made by the American, in payment of the debts and liabilities of the Commercial, *during the process of the liqudation*. It is not alleged that the Commercial was indebted to the American prior to the resolutions of August 1, 1914, in which the process of liquidation was begun, or prior to the transfer of the assets and the business of the Commercial to the American, which is alleged to have taken place on August 3, 1914. On the contrary, it is expressly stated that the indebtedness claimed by plaintiff arose pursuant to the contract of August 11th, 1914, entered into between the plaintiff and the Commercial Bank, by virture of the authority granted by resolutions of the Boards of Directors of said banks, dated August 1, 1914 (paragraphs 3, 4, 5, 6, 7, 8 and 9, original bill, record pp. 2, 3and 4).

Counsel for appellants seek to nullify the effect of this argument by contending that the process of liquidation did not begin, in accordance with the provisions of section 5220 of the U. S. Revised Statutes, until the same was authorized by the vote of two thirds of the shareholders of the Commercial Bank. This, they argue, was not done until Sep-

tember 30, 1914, on which date the two resolutions of the shareholders of the Commercial Bank, attached as Exhibits "E" and "F" respectively, to plaintiff's amendment to its original bill (see record pp. 82-3-4-5) were passed. It is alleged in the fifth paragraph of the amendment to the bill (see pp. 76-77 of the record in this Court) that the amount sued for was largely incurred during the period of two weeks, after the agreement between the two banks of August 11, 1914. The conclusion of this argument is, therefore, that the indebtedness sued for was not incurred during the process of liquidation.

It will be observed, by reference to the resolutions of the stockholders of the Commercial Bank, referred to supra, that in the resolution shown as Exhibit "F" to plaintiff's amendment, reference is made to the resolutions of the Board of Directors of said association, adopted August 1, 1914, and also to the contract between said association and said American National Bank, of date August 11, 1914; and that said resolutions and said contracts are "in all respects ratified and approved" by the stockholders of said Commercial Bank. It is too familiar a rule of law to require any extended argument or citation of authority that

> "A ratification relates back to the time when the unauthorized act was done and marks it as effective from that time as though it had been originally authorized, and that therefore upon ratification the parties to all intents and purposes stand in the same position in respect to rights and liabilities arising out of said act as though the person assuming to act as agent had acted under authority previously conferred."
>
> 2d Corpus Juris, section 138, p. 517,
> and see note 39 Id.

Moreover, the argument of opposing counsel, on this point, begs the queston at issue, for the admitted fact is that

the process of liquidation did actually begin on August 3, 1914, where the assets of the Commercial Bank were transferred and turned over to the American Bank, the place of business of the former closed, and its affairs thereafter conducted under the direction and management of the officers and agents of the American Bank, from the latter's offices. The plaintiff's own pleading establishes, beyond fair dispute, that the alleged indebtedness sued for in this case arose *during the process of liquidation and not otherwise.*

There is a definite time when the status of a shareholder of a national bank, with respect to his statutory liability, is determined as to principle and as to application, though it rarely if ever happens that at such times the *amount* of his liability is ascertainable. There is a time when the schedule of contracts, debts and engagements of the bank for which shareholders are secondarily or indirectly liable is complete, and the list of creditors is finished. When is that time? Said the United States Supreme Court in Richmond v. Irons, 121 U. S., at p. 60, "The individual liability of the stockholders, as imposed by and expressed in the statute, is indeed for all the contracts, debts and engagements of such association, but that must be restricted in its meaning to such contracts, debts and engagements as have been *duly* contracted in the *ordinary course of business.*" When is the ordinary course of business at an end? Certainly, when a bank closes its doors for all time, ceases to loan money, transfers all its assets and turns its avails into the hands and place of business of another bank. The Court answers the question when, at page 62 of the cited volume, it is said "Stockholders have a right to be exonerated from the payment of all contracts, debts and engagements contracted since the date of its suspension." Could any language be plainer for application to the instant case?

In the Irons case there is an obiter statement as to what

Holmes, the president of the bank, might have done with authority of the shareholders. This statement is obiter because Holmes did not have such authority. We submit that after suspension of business, neither officers, directors nor the shareholders themselves can make a contract, debt or engagement for the bank so as to give rise to a liability under the statute. How can a majority of the stockholders impose such liability upon the minority when the statue, as constructed by the Court, says "No", How can two-thirds impose it upon the other one-third? How, even, could ninety-nine per cent impose it on the other per cent? A stockholder might make his own contract, and any number of stockholders might make their joint contract, but they cannot add to or take from the statute or prolong the statutory liability.

IX.

It is admitted that there is not in the original agreement, embodied in the resolutions of the Boards of Directors of the two banks, any express promise on the part of the Commercial to pay to the American any deficit growing out of the liquidation. It is insisted that such promise is necessarily to be implied from (a) the word "secure" in the sixth section, (b) the word "repay" in that section, (c) the provision for interest in that section, and (d) the statement in that section that the stockholders' liability is not released by force of the terms of the contract. Subdivisions (a), (c) and (d) have been amply dealt with heretofore. However, in connection with subsection (b) we shall consider these contentions in discussing the oft referred to Schofield case, 97 Fed., p. 282.

SCHOFIELD v. STATE NATIONAL BANK

Schofield, as Receiver of Union National Bank of Denver, brought an action against State National of the same

city. Each of the banks was a National Bank. A comparison of the petition in the Schofield case with that in the case at bar shows:

| UNION BANK v. STATE BANK (Schofield case) | AMERICAN BANK v. COMMERCIAL BANK (Instant Case) |
|---|---|
| 1. On June 23, 1894, it was desired to make an arrangement for transfer of assets by State Bank and assumption of liabilities by Union Bank. | 1. On August 1, 1914, it appeared advisable to liquidate the Commercial for consolidation with the American. |
| 2. The president of the Union was not immediately able to examine personally the paper of the State Bank, but wrote to the State Bank, "Now, if you people are disposed to *secure* us by your entire assets until we can be satisfied in the selection of paper, to *reimburse* us for the assumption of your liabilities, I will undertake to call our board together tonight at some hour, and let the transfer be announced in the morning papers." | 2. The negotiations took, on August 1, 1914, tangible shape in the form of resolutions of the respective Boards of Directors for the purpose of liquidating the Commercial for consolidation with the American. The resolution of the Directors of the Commercial in the nature of a proposal, contemplated<br>(a) Commencement of proceeding for liquidation and consolidation.<br>(b) Transfer of *all* its assets to American.<br>(c) To *protect and secure* the American.<br>(d) Taking over by American of business of Commercial.<br>(e) Accounting by American for any possible surplus. |
| The Directors of the State Bank, upon consideration, authorized its officers to sell and transfer its office furniture, etc., to Union Bank for $15,000 and to assign and transfer (not all its assets but) a sufficiency of the assets to | This resolution of the |

*secure* the Union Bank for the liabilities assumed by it.

The Union was not to take all the assets of the State, but such a part thereof as was sufficient to protect it in its assumption. The surplus was not to be taken by the Union. (This is the exact equivalent of taking the surplus and eventually restoring it in case of demonstration that there was in reality such surplus.

3. The State was taken over by the Union on June 24, 1894.

4. A subsequent con[illegible] was made giving the Union a larger latitude selecting and enjoying protection of assets, and with a promise by the Union to account for the surplus, if any. (See bottom p. 289 and top p. 290 of 97 Fed.)

5. The assets transferred to the Union did not produce enough to discharge the liabilities assumed, and the receiver of the Union, which failed, brought suit against

Commercial was met with an acceptance by the American on one condition, that all the assets should be transferred and that they should upon admeasurement by the officers and value to *protect and se*- be found sufficient in amount *cure* the American for all amounts *payment* (not the "loans" of which) was assumed. The American was to take all the assets, its officers being satisfied that they were sufficient to protect the American. Any possible surplus was thus taken to be returned.

3. The Commercial was taken over by the American August 3, 1914, its officers having measured and valued the assets of the Commercial.

4. There was a subsequent contract in which, it is contended, made the American a lender of money and a creditor of the Commercial.

5. The assets of the Commercial transferred by the Commercial did not produce enough to discharge the liabilities assumed, and the

the *State Bank* to recover the deficit offering to return the uncollected assets.

6. The contract used the words "secure" and "reimburse."

7. Said the Court, in this case, in view of these facts:

"It is not claimed that there is any express stipulation or provision in the agreement between the banks to the effect that the State Bank shall repay the money which the Union Bank has expended on account of the debts of the State Bank. But the contention is that such a contract must be implied, because that agreement provided that certain of the bills receivable of the State Bank should be assigned to the Union Bank and to the trustee to secure the reimbursement of moneys which the Union Bank expended in paying these debts.

American brings suit against the shareholders of the Commercial to recover the deficit.

6. The contract used the words "secure" and "repay."

7. It is not claimed that there is any expressed stipulation in the agreement between the two banks, even in the contract of August 11, to the effect that the Commercial shall repay the money which the American has expended on account of the debts of the Commercial.

Indeed the absence of such provision at the latter part of the first paragraph of section six of the contract is highly significant.

In the light of the decision in the Schofield case, what will the Court say here?

But an agreement in direct conflict with the terms of an express contract cannot be implied from such a contract. An implication may not contradict and destroy an express stipulation. The letter and the resolutions on June 23 and June 25, 1894, which constitute the original contract, strongly indicate that it was the purpose of the parties to that agreement not to charge the State Bank with any liability, but to relieve it and its stockholders of all liability for its debts. It is improbable that that State Bank insisted so strenuously upon an express agreement from the Union Bank to assume its debts and

agreed to turn over to the latter bank all its valuable assets to secure it from loss in the performance of that contract, without a clear intention and understanding between the parties that the performance of this contract would leave the State Bank free from liability, not only to its creditors, but also to the Union Bank. This, it seems to us, is the fair construction and true meaning of the letter and resolutions June 23-25 taken by themselves."

"Another position of counsel for the plaintiff in error is that the contract was *ultra vires* of the Union Bank, that the moneys it expended under it were paid for the use of the State Bank, and that consequently there is an implied contract by the latter bank to pay back the balance above the amount which the Union Bank has obtained from the assigned assets as money had and received by the State Bank for its use. There are many fatal objections to this theory, but we shall notice but two."

"Another position of counsel for the plaintiff in error here is that there was nothing in the contract beyond the powers of the Union National Bank, and therefore there is no foundation for a cause of action for the money it has expended *in accordance with the terms of its contract.* This agreement required the Union Bank to do nothing which national banks are not authorized to do—nothing which they do not do in the conduct of the ordinary business of banking."

"A fair construction of the June agreement, as we have already held, left the State Bank free from liability to the Union Bank for the money it expended or agreed to expend on the account of the debts of the State Bank, for that there was no release of that liability in the August agreement, because the liability never existed. The clause which the agreement of August contained on this subject was only a more positive statement of the original intention of the

parties fairly expressed in the June contract. The original contract was that the State Bank should assign sufficient of the bills receivable, moneys, credits and other assets to secure the Union National Bank for the payments and liabilities which it shall find it necessary to pay or assume in discharging said debts and liabilities of said State National Bank."

It is to be observed further, that the decision is firmly bottomed upon the original agreement of June, 1894, and not upon the supplementary contract of August, 1894. The Court said, after deciding the case upon the contract as originally drawn, "If, however, there were any doubt that this is their true construction"—referring to the original communications—"it would be removed," etc, These are words expressing a condition contrary to fact, and necessarily mean that the Court did not entertain a doubt of the soundness of its construction of the original contract.

X.

It is claimed that the American became a creditor of the Commercial because of its paying, at the request of the Commercial, the debts of the Commercial. In reply, we state that in paying the debts of the Commercial, the American did just what it agreed to do by resolution of its Board of Directors on August 1, 1914. It received the consideration there provided as a condition to the assumption of the obligation, that is, it received from the Commercial assets of an amount and value, in the opinion of its officers, sufficient fully to protect it.

However, even if there were a subrogation, the American did not become a creditor of the *Commercial Bank* by reason of paying the debts of the Commercial, until the payments were actually made. This was necessarily done after the suspension of business by the Commercial and after the course of its ordinary and usual business was ended.

The relationship of debtor and creditor, then, even if it arose by subrogation, does not affect the shareholders in their statutory liability.

Richmond v. Irons, supra.

This same contention was made and denied in the Schofield case.

XI.

The question is asked, what consideration could there have been for the American to make the contract which the defendants insist was made? The Court has no interest in the wisdom or folly of a contract. The inquiry therefore is pertinent merely as an incidental light for construction. The legal consideration flowing to the American is plainly shown, and a part at least of the expressed consideration was a sufficient inducement for the American to assume the risk involved. It "took over the business" of the Commercial. In addition, it prevented another shock to the public confidence in banks, the most valuable asset of a bank.

XII.

The situation in which the plaintiff is placed is well described by a paraphrase of the language of the United States Supreme Court in the case of Richmand v. Irons, supra, at the middle of page 62, "it made its agreement in view of the estimate of its officers of its (then) present interest and advantage; it cannot now undo or vary that agreement to the prejudice of the stockholders, who have a right to be exonerated from the payment of all contracts, debts and engagements of the bank contracted since the date of its *suspension.*"

XIII.

The "assumption" by the American of the liabilities of the Commercial, in consideration of the transfer of all the assets of the Commercial, in and of itself necessarily implies

the relief of the Commercial. It is altogether probable that, if the American had failed, a creditor of the Commercial would have the right, not only to subject any Commercial assets not disposed of, but to have an action against the shareholders of the Commercial. However, the "assumption" by the American upon a condition which was preformed is not to be reconciled with any relationship of creditor and debtor.

In the case of Lenz v. Chicago R. Co., 86 N. W. 607, 608 the Supreme Court of Wisconsin said, "assumed" means to take upon one's self, to undertake or to *adopt;* or, in other words, to take upon one's self or adopt the obligations or the liability of another is to put *one's self in the place of of that other* as to such obligation or liability—to become bound as such other is bound. It is a broader word than *'agrees to pay'*, and includes the latter." The word is one of substitution and, when there is an assumption for consideration, there cannot be a relationship of creditor and debtor between the one who asumes and the one who is relieved.

## XIV.

It is submitted that three rules of construction are pertinent to the consideration at hand:

1. The absence of pertinent allegations of fact in the petition, essential or material to the validity of the plaintiff's claim, justifies the Court in presuming that such allegations could not truthfully be made, and that the facts are to the contrary.

2. Weeks and even months of poring over the contract in the light of plaintiff's claim increases the original idea of the incongruity and even hideousness of a situation wherein a liquidating agent, a national bank in active operation, enjoying the patronage of hundreds and perhaps thousands

of customers, whose welfare is of interest to the bank, is made a creditor of a retiring bank, in an entirely uncertain amount, holding in its hands the power to forgive wholly or partially a debtor of the retiring bank and the power to honor in full a doubtful creditor of the retiring bank, either of whom may become the friend or enemy of the liquidating bank, as circumstances may suggest, all the while conscious that, whatever the deficit arising from such liquidation is can be made good out of the shareholders of the retiring bank. Public policy should forbid such a possibility. It matters not that the claimed power in the given circumstances would not be abused in some certain case. The principle is fundamentally wrong and the conception is repulsive to a court of equity. Even though there be no defined public policy which forbids such an arrangement, it is the part of consistency to assert that every reasonable intendment should be against an interpretation which will produce that situation.

3. The liability of the shareholders of a national bank is *stricti juris*, so that the liability does not exist unless the case is clear.

## XV.

There is another feature of this contract which is utterly inconsistent with the relation of debtor and creditor. The third paragraph of the contract provided that the Commercial National Bank will have the American National Bank appointed "as liquidating agent for said Commercial National Bank in said liquidation for consolidation as aforesaid."

> "Liquidating agents are charged with a duty of collecting the assets of the bank and paying its debts, and for that purpose they may bring suit against the stockholders on his unpaid notes held by the bank."

Norwood v. National Bank, 92, Tex. 268.

Fed. Statutes Ann., volume 5, page 167.

In the case of Williamson et al. v. the American Bank et al., 115 Fed. Rep. 793, a trustee appointed by the stockholders to collect the assets of the bank and pay off the creditors joined with certain creditors to enforce the indiviual liability clause. To this suit a demurrer was filed upon various grounds, of which was one which denied the right of said trustee to institute or become a party to such suit.

This ground of the demurrer was approved by the Court, and in the deliverance in that case the Court said that instead of such trustee being a party plaintiff he should properly be a defendant. With trustee the Court coupled also a liquidating agent and the language used was applicable to both. The reasons given by the Court, and given in exceedingly strong language, were among others that such a person had possession of the assets of the insolvent bank, was charged with their preservation and collection and in a creditors' bill would be the identical person called upon to account and answer for the assets of the bank.

In the light of these authorities, it must be clear that a liquidating agent of a bank in process of liquidation should not and cannot be properly a creditor of the bank. The two are utterly inconsistent with each other and in a process of liquidation involving an accounting should properly be on opposite side of the suit.

The fact, therefore, that this contract makes the complainant in this case the liquidating agent, goes far to sustain contention that the contract makes a purchase and does not create a loan.

To pursue this thought, the American National Bank took possession of all the assets to secure itself for the

assumption of the liabilities of the Commercial Bank; it has collected a part and still has the remainder. There are no other assets belonging to the defendant bank. It does not and it cannot pray for an accounting, or for setting up a lien upon any assets belonging to the defendant bank, for the simple reason that an accounting must be had, if had at all in its behalf, as a creditor with itself as liquidating agent, which is a legal impossibility, and there are no assets upon which to establish a lien, for it already holds all the assets of the bank.

16.

WYMAN v. WALLACE, 201 U .S. 230.

The essential facts of this case are radically different from those of the case at bar.

Two national banks, the American and the Union, were, prior to December 21, 1895, in business at Omaha, Nebraska. During the month of December, 1895, the American, possessing abundant paper assets, was required to obtain cash to pay certain depositors on January 1, 1896. Wishing to avoid the disaster of a run, the officers and large stockholders of the American arranged with the Union to pay off the depositors so as to enable the American to preserve its integrity and conserve its assets.

A contract was entered into by the two banks to evidence the arrangement made. By the terms of the contract the Union assumed the payment of all the liabilities of the American, receiving therefor cash and such bills receivable as it was willing to accept at par and without recourse. *Non-negotiable notes* of the American were to be given, and *were actually given* to cover the difference between the assets so received by the Union, and the liabilities assumed by the Union. These notes were secured by a pledge of the remaining assets of the American, one

Kimball, as trustee, being the pledgee. An adjustment of the difference between the assumption of liabilities and the assets actually turned over by the American was made and the difference was found to be $201,000.00, for which *three* (3) *notes of* $67,000.00 *each*, payable in one, two and three years, respectively, were given by the American to the Union. The remaining assets of the American were placed in the hands of Kimball, trustee, for liquidation and for application of the proceeds as credits on the notes.

On January 14, 1896, twenty-four days after the execution of the contract, the shareholders of the American adopted a resolution instructing the Directors to take action looking toward the liquidation of the American.

On February 25, 1896, sixty-six days after date of the contract, the shareholders of the American adopted a resolution for voluntary liquidation.

One of the notes delivered by the American to the Union was transferred to Wallace. Kimball, trustee had met with little success in collecting the assets of the American placed in his hands. Wallace brought suit against the Union bank, Kimball, trustee, the American bank, and the stockholders of the American, to recover the amount due on his note.

By amendment the proceeding was converted into a creditor's bill.

It is distinctly recognized by the Court, at the bottom of the page 242, that the assets which were by the American turned over to the Union was a distinct transfer and not a pledge, and that the only pledge involved was that of the property delivered to Kimball, trustee, under an express contract that the assets so delivered to Kimball would be security for the loan of money represented by the notes.

The all important conclusion which was reached by the Court, and which distinguishes the case from the one at bar, is shown in the following excerpt from the opinion of the Court, to-wit:

> "The borrowing of the money by the American bank did not necessarily put it into liquidation. It had a large amount of assets, and if the real had equalled the nominal value of these assets it would have been enabled after discharging its obligation to the Union bank to continue business. But on examination (after the loan had been obtained), the stockholders felt that it was wiser to stop at once. But that decision did not at all impugn the wisdom or *bona fides* of the transaction by which the money was obtained to pay off the pressing demands of the American bank."

The facts of the case at bar are utterly different. The transaction between the American and the Commercial necessarily involved the permanent retirement of the Commercial bank from the banking business. Liquidation was not an after thought, or an after determination.

On August 3, the first business day following the action of the Boards of Directors of the two banks, the Commercial suspended business, and the American took up its business. The original resolutions provided that the American "should take over the business of said Commercial" (p. 17 of Records).

In determining the question whether the officers of the American bank could legally issue its notes to the Union bank for money borrowed, and put in pledge its remaining assets, the Court said:

> "When time is obtained by the new indebtedness (in this case, a year), it gives the borrowing bank, all

of its officers and stockholders time to consider and determine the wisdom of attempting a further prosecution of business."

It was in view of these facts and this reasoning, and these alone, that the Court in the Wyman-Wallace case held that the stockholders of the American were liable under the statute.

## MOTION TO DISMISS AS RELATED TO THE AMENDMENT.

### XVII.

### SUMMARY OF THE NEW MATTER SET UP IN THE AMENDMENT:

(a) Paragraph 1 of the amendment attaches, as Exhibits "B" and "C," copies of the resolutions of the respective Boards of Directors of the two banks, of date August 1, 1914, the substance of which had already been set out in the preamble to the contract of August 11, 1914, which was attached to the original bill as Exhibit "A."

(b) The second paragraph of the amendment contains certain excerpts from said resolution of August 1, 1914, from which plaintiff's counsel deduce the contention that the American Bank was given the alternative either to purchase the assets of the Commercial bank or to receive and hold them as collateral security for its notes.

(c) The third paragraph of the amendment alleges, in substance, that the assets of the Commercial bank were transferred to the American bank on August 3, 1914, not as cash, but as collateral security for the indebtedness of said Commercial bank, created by its assumpton and payment of the liabilities of said Commercial bank. It is evident that the allegations of this paragraph are mere conclusions of the pleader (and not statements of facts), and we submit clearly in conflict with the legal effect of the transac-

tion between the two banks, as disclosed by the resolutions and the contract, copies of which are attached to the original and the amended bills, but we do not intend at this point to discuss the merits of these allegations, but merely to state them. We will undertake to show that they are not justified hereafter.

(d) Paragraphs 4 and 5 of the amendment set up an alleged course of dealing between the two banks, between the date of the resolutions of the two Boards of Directors, on August 1, 1914, and the transfer of the assets and business of the Commercial to the American, on August 3, 1914, and the execution of the contract of August 11, 1914, whereby the agreement between the two banks was formally consummated and reduced to writing. It is alleged in said paragraphs 4 and 5 of the amendment that during that interval the Commercial bank continued in active operation, receiving deposits, cashing checks, clearing checks on other Macon banks through the Macon Clearing house, checking on its deposits in other banks, and transacting other business as an active banking institution, through its own officers and clerks; and that funds were provided by the plaintiff by means of checks drawn by the officers of said Commercial bank on said plaintiff, to enable said Commercial bank to pay its depositors and meet its other obligations; that these checks were charged to the account of said Commercial bank by the plaintiff, and were carried as an overdraft against said Commercial bank; and that the amount of said overdraft, after crediting all collections from assets of said Commercial bank, constituted the indebtedness being asserted against the shareholders of said Commercial bank.

(e) Paragraph 6 of the amendment alleges the purchase, during the process of liquidation, by the plaintiff,

from said Commercial bank, of certain real estate, constituting one of the assets of said bank, pursuant to a resolution of the Board of Directors of said bank, passed July 1, 1916, nearly two years after the transfer of the assets and the beginning of the liquidation. A copy of the resolution of said Board of Directors, authorizing a sale of said real estate, at the price offered by the plaintiff, is attached to the amendment, wherein it is stipulated that the agreed purchase price should be "credited on the indebtedness of the Commercial National Bank to the American National Bank."

(f) Paragraph 7 of the amendment contains allegations to the effect that the alleged overdraft, in favor of the plaintiff against the Commercial Bank, was reported to the Comptroller of the Currency as a liability of said Commercial bank, both by the plaintiff bank and by said Commercial bank.

(g) Paragraph 8 of the amendment attaches copies of the two resolutions of the shareholders of the Commercial bank, both dated September 30, 1914, ratifying the action of its Board of Directors on August 1, 1914, placing said bank in voluntary liquidation and ratifying, in all respects, said resolutions of August 1, 1914, and the contract, made pursuant thereto, of August 11, 1914.

## XVIII.

### ALL TRANSACTIONS BETWEEN THE TWO BANKS, PRIOR TO THE CONTRACT OF AUGUST 11, 1914, WERE MERGED INTO SAID CONTRACT.

The alleged course of dealing between the two banks, whereby the Commercial drew checks on the American in th payment of its liabilities, which checks were cashed by the American and charged against the Commercial, thus

creating an overdraft, which, it is alleged, constituted the basis of the indebtedness sued for, is alleged to have arisen pursuant to an understanding or agreement between the two banks, adopted and carried out before the contract of August 11, 1914, which contract purports to set out, in full, the agreement between the two banks, touching the transfer of the assets of the Commercial bank to the American bank, and the obligations of the parties thereto.

As no writing is set out, in the pleading, containing the terms of the alleged understanding or agreement between the two banks, having reference to said course of dealing, we must assume that the said understanding or agreement was *in parol*. If this is so, we respectfully submit that neither said understanding nor agreement, nor the course of dealing pursued with reference to the same, prior to the contract of August 11, 1914, can be invoked to add to, take from, vary or explain said contract of August 11, 1914, the same having been merged into said contract.

Union Mutual Life Insurance Co. v. Mory, 96 U. S. 544-549, 24 L. Ed. 674 (1), 675.

Van Weel v. Winston, 115 U. S. 228-247, 29 L. Ed. 384 (2), 386.

Potomac S. B. Co. v. Upper Potomac S. B. Co., 109 U. S. 672, 27 L. Ed. 1070 (4), 1073.

Emerson v. Slater, 22 Howard 28, 16 L. Ed. 360 (4), 365.

"All oral negotations between parties to a written contract, which either preceded or accompanied the execution of the instrument, are to be regarded as merged in or extinguished by it; and the writing is to be treated as the exclusive medium of ascertaining the agreement to which the contractors bound themselves."

Logan v. Bond, 13 Ga. 193.

See also Haley v. Evans, 60 Ga. 159.

Arnold v. Molsby, 120 Ga. 586.

These authorities, and many others of a similar nature that might be cited, we think justify the conclusion that, even if the relation of debtor and creditor could possibly be said to have been created between the two banks by the alleged understanding and agreement between them, and the course of dealing adopted with reference thereto, before the contract of August 11, 1914, the status of the parties would have to be determined by reference to the contract alone, and if a proper interpretation of the terms of the contract does not disclose the relation of debtor and creditor between the two banks, any indebtedness that may have been created, by a course of dealing between said banks, prior to the execution of said contract, would have to be treated as satisfied by said contract, or by the assets that were transferred under the terms of said contract.

## SUCH A COURSE OF DEALING DID NOT CREATE THE RELATION OF DEBTOR AND CREDITOR.

It must be remembered that the American bank was made the liquidating agent of the Commercial bank, for the purpose of consolidation, under the terms of the resolutions of the Boards of Directors of both banks and the contract between said banks, dated August 11,1914, subsequently ratified by the stockholders of the Commercial bank; and that, as such liquidating agent, said American bank was charged with the duty of collecting and reducing to cash all of the assets of the Commercial bank and, after repaying itself for all sums advanced by it, in discharging the liabilities of said Commercial bank, together with interest thereon, and paying all liabilities of said Commercial bank,

not paid by advancements from said American bank, together with all expenses of liquidation, etc., "to account to the shareholders of said Commercial National Bank, and from time to time pay over to said shareholders *pro rata* the surplus remaining in its hands from the proceeds of said assets" (see paragraph 6, Exhibit "A" to the original bill, page 20 of the Record).

It should be noted further that said American bank had assumed and promised to pay, "when and as the same should be presented for payment," the depositors and other liabilities of said Commercial bank. (See paragraph 5, Exhibit "A" to original bill, page 19 of the Record; paragraph 3 of the original bill, page 2 of the Record, and the resolution of the Board of Directors of the American bank, Exhibit "C" to the amendment, page 81 of the Record).

The American was bound, then, by contract, to pay "when and as the same were presented for payment," the liabilities of the Commercial; and, in the performance of its duties, as liquidating agent of the Commercial, it was obliged to keep an accurate account of its receipts and disbursements, on behalf of the Commercial. The method or course of dealing to be pursued between the banks, in the discharge of these obligations, was purely a matter of business expediency or convenience and sheds no light upon the legal status of the parties. Several reasons occur to us, in this connection, for the course alleged to have been pursued by these two banks, none of which warrants the conclusion reached by opposing counsel, that such a course of dealing is consistent with no theory save that of the relation of debtor and creditor, to-wit:

(1) It was desirable that the Commercial should continue to take deposits, for a time, after the transfer, in order that the American might more certainly succeed to

the patronage of the Commercial and thus reap the full fruits of its trade.

(2) It was easier and safer for the American to pay the liabilities of the Commercial by means of checks drawn on it by the officers of the Commercial, because the latter were fully acquainted with those liabilities, as to priority, amount, etc., and were therefore in position to make proper adjustments, readily and without the likelihood of mistakes, while the former was not.

(3) The business of banks is ordinarily conducted by means of deposits and checks and hence that was the method most in keeping with the custom of the American and especially with its plan of bookkeeping. The necessary effect of that plan, in the event of an excess of disbursements, was an overdraft.

## XX.

## THIS VIEW RESOLVES AN APPARENT CONFLICT BETWEEN PARAGRAPH 4 OF THE ORIGINAL BILL AND PARAGRAPH 4 AND 5 OF THE AMENDMENT.

It is stated, by the plaintiff, in paragraph 4 of the original bill, that:

> "Pursuant to said agreement, the plaintiff took charge of all of said assets so transferred to it by the said bank as security on the 3rd day of August, 1914, and from and after that date it paid in due course and as called upon all of the depositors of the said bank, its bills payable, and other liabilities." (See page 3 of Record).

Unless the payment of checks drawn on the plaintiff by officers of the Commercial was equivalent to and intended as payment by the American of the liabilities of the Com-

mercial, the allegations of paragraphs 4 and 5 of the amendment are irreconcilable with those of paragraph 4 of the original bill, supra.

## XXI.

## WHY THE OFFICERS OF BOTH BANKS TREATED THE OVERDRAFT AS A LIABILITY OF THE COMMERCIAL.

It is alleged in paragraph 6 of the amendment that the Board of Directors of the Commercial, on July 1, 1916, passed a resolution accepting the offer of the American to purchase the bank building of the former at and for the sum of $40,000.00, "to be credited on the indebtedness of the Commercial National Bank to the American National Bank" (pages 77 and 82 of Record).

It will be observed that this resolution, on its face, purports to be an acceptance of an offer by the American to purchase property from the Commercial, and the words above quoted appear to be a mere statement of the terms of said offer. They are, then, the words of the American, ingeniously put into the mouths of the Directors of the Commercial, and repeated by them, as an incident to the acceptance of the offer. It is, perhaps, true that they adopted the language and, in a sense, made it their own, by accepting the terms of the offer; but it is hardly fair to conclude that they intended, by the use of that language, under the circumstances stated, to interpret the contract of August 11, 1914, or the status of the parties thereto. Indeed, if, as we contend, the two banks had, for the sake of business convenience, been treating the advances by the American as an overdraft, pending the liquidation of the assets of the Commercial, no significance could reasonably be attached to the use of such language, especially when dealing with the sale of an asset, the proceeds of which

might be expected to be applied as an offset to such overdraft, *pro tanto*.

It will be observed, further, that this transaction took place nearly two years after the contract between the two banks and only a few months before plaintiff filed its bill in this case. If any significance is to be attached to the language used, as an interpretation of the status of the parties to the contract, we must attribute it to the sagacity of the plaintiff and the inadvertence of the defendant bank or its officers.

The same reasoning applies to the allegations of the 7th paragraph of the amendment, wherein it is alleged that both the American and the Commercial, in their reports to the Comptroller of the Currency, listed said overdraft as a liability. Such a statement is nothing more than a self-serving declaration, when made by the American, and, in either case, if a statement of the assets and liabilities of the Commercial was to be made at all, as required by section 5223 U. S. Revised Statutes, such an overdraft could not, obviously, be listed as an asset and must, of necessity, be shown as a liability.

## XXII.

## THE CONTRACT WAS EXECUTED, UNAMBIGUOUS, AND WAS GIVEN NO PRACTICAL INTERPRETATION BY THE SHAREHOLLERS.

The allegations of paragraphs 4, 5, 6, and 7 of the tion of the contract by the parties themselves.

The rule in such cases is that:

> "Where the language used by the parties to a contract is of doubtful construction, the practical interpretation by the parties themselves is entitled to great, if not controlling, influence."

Chicago v. Sheldon, 9 Wall, 50, 19 L. Ed. 594 (2).

"But where its meaning is clear, the error of the parties cannot control its effect."

Philadelphia, etc., R. R. Co. v. Trimble, 10 Wall 367, 19 L. Ed. 948 (2), 951.

See also 9 Cyc. 590 (2), and note 49, and see:

Russell v. Young, 94 Fed. 45, 48.

Menage v. Rosenthall, 56 N. E. 579.

Howell v Johnson, 64 Pac. 659.

Gardner v. Paylor, 56 N. E. 134.

Davis v. Shafer, 50 Fed. 764, 768.

It is obvious, moreover, that the rule applies to cases of executory contracts only.

See Topliff v. Topliff, 122 U. S. 121, 30 L. Ed. 110 (13), 1114.

(1) It is submitted that the contract, which is the foundation of the present action, is not such as is contemplated by the rule referred to. All previous words, writings and acts are merged in this solemn instrument, drawn with the greatest care and deliberation, being eleven days in the making—August 1-August 11. The terms of this contract declared a definite and finished status. The contract did not embody a working agreement as related, in a continuing and executory sense, to the two banks, reciprocally. By this agreement the Commercial did a finished thing, i. e., turned over its business and transferred its assets to the American. Correspondingly, the American, inso far as the Commercial bank or its shareholders was concerned, did a definite and finished thing, i. e., it measured and valued the assets, found them, "in the opinion of its officers," "sufficient in value and amount" to make the American safe in its undertaking, and then unreservedly obligated itself to assume the liabilities of the Commercial.

Nothing more remained for the Commercial to do; nothing more remained for the American to do, save to make good to the creditors of the Commercial the promise which it made to the Commercial. Whatever, of further execution on the part of the American, was provided or forecast by the contract was not with reference to the Commercial. The contract, as respected the reciprocal relations of the banks, was by its terms, an executed one.

(2) It is submitted that the contract is not ambiguous in the sense contemplated by the rule.

(3) It is, of course, to be borne in mind that the action is, in its principal, and, in the hope of the plaintiff, only valuable characteristic, against the shareholders of the Commercial. The contract, embracing the feature of liquidation, must needs be, and be considered, the contract of the shareholders—not all who are sued, but the requisite majority in stockholders' meeting assembled. Insofar as the stockholders' liability is concerned, therefore, as growing out of and created by the contract, the only words, spoken or written, or acts, to be heeded by the Court, if any are to be heeded beyond the corners of the instrument itself, are the acts or spoken or written words of the shareholders sought to be bound. A casual reading of the amendment reveals that there is no such act or word as would justify the Court in even modifying the interpretation of the contract which has been judicially declared.

(4) When the shareholders met on August 12, 1914, and on September 20, 1914, they were in effect asked, "Are you willing to liquidate this bank under the terms and conditions of *this* contract," the contract exhibited to the petition, without lights or shadows from any other act or spoken or written word. They said, "Yes, we agree to liquidation by the American National Bank on these terms."

Can the shareholders be held to any other interpretation than the proper interpretation of the naked contract?

In the case of Schofield v State National Bank, supra, the Court decided against such an inferential interpretation of the contract, by the conduct of the parties. See 97 Fed. 282, 283-286.

## XXIII.

## NO NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS, BY THE COMMERCIAL TO THE AMERICAN, WERE TAKEN.

The Board of the Commercial, in its first resolution, of August 1, 1914, resolved that:

"The Board of Directors of this association hereby authorized the officers of this association to transfer to the American National Bank of Macon, Georgia, as cash or as collateral, for the notes of this association, all of the assets of this association." (Record p. 80.)

And words of like import appear in the resolution of ~~plaintiff~~ American's Board of Directors, of the same date.

Appellee contends that the effect of said provisions of the resolutions of the two Boards of Directors was to present to the officers of the two banks the alternative of making a contract:

(1) Either for a sale of the assets of the Commercia to the American,

(2) Or to pledge said assets to the American as security for indebtedness to be created by advances to be made by the American in payment of liabilities of the Commercial.

And appellee asserts that the latter alternative was taken.

We join issue with ~~appellant~~ appellee, on its own ground, by asserting that the latter alternative was not taken.

It will be noted that, in order to make the alternative of a pledge available, the assets were to be transferred, "as collateral for the notes of this association," and not otherwise.

In the first clause of the 4th paragraph of the amendment to the bill, the plaintiff expressly stated that:

> "It was found to be impracticable to take notes, as had been contemplated by the resolutions, for the amounts advanced and being advanced by the plaintiff in the payment of the liabilities of the Commercial National Bank, which it had assumed." (Record p. 76).

No explanation is offered as to why it was found impracticable to take notes for liabilities, a schedule of which was attached to the contract between the two banks, of August 11, 1914; but the important fact remains that *no notes were taken*. It seems to us that this eliminates the alternative of a pledge and establishes the alternative of a sale.

In this connection it occurs to us that a possible explanation of the *reason why* it was found to be impracticable to take notes, for such advances, and a transfer of assets as collateral security therefor, was that, *perhaps*, the engagement, contained in the resolutions of both of the Boards of Directors, of August 1, 1914, that the American was to "take over the business" of the Commercial (Record pp. 80 and 81), which we suspect was the controlling inducement to the American to enter into the contract, *presented some difficulties* to the effectuation of the alternative of a pledge, and that, hence that alternative was abandoned in favor of the alternative of a sale, which did not involve the same difficulties.

## XXIV.

## THE TRANSACTION BETWEEN THE TWO BANKS WAS A SALE OF THE ASSETS OF THE COMMERCIAL TO THE AMERICAN.

It was so expressly stated in the resolution of the Board of Directors of the Commercial, of August 1, 1914, in the following unambigious language, to-wit:

> "Resolved, That, in the opinion of the Board of Directors of this association, it is expedient for this association to go into voluntary liquidation, under sections 5220 and 5223 of the Revised Statutes, and that the officers of this association be and they are hereby directed to proceed, under the by-laws, to call a meeting of its stockholders to consider this question and the consolidation of this association with the American National Bank of Macon, Georgia, by the sale of its assets to the said bank." (Record pp. 79-80).

This resolution was literally carried into effect by paragraph 1 of the contract between the two banks, of August 11, 1914, whereby *all* of the assets of the Commercial were transferred and conveyed, absolutely, with general warranty of title, and without any defeasance clause, to the American (Record p. 18). And by paragraph 2 of said contract, wherein substantially the same language as that contained in the excerpt from said resolution of August 1, 1914, was used (Record pp. 18, 19).

And both said resolution, of August 1, 1914, and said contract, of August 11, 1914, were subsequently "in all respects ratified and approved" by the shareholders of the Commercial, on September 30, 1914 (Record pp. 83, 84, 85).

The 4106 section of the Code of Georgia fixes the essentials of a sale: (1) An identification of the thing sold; (2) an agreement as to the price to be paid; (3) consent of the parties.

Incident to every perfect sale is the delivery of the thing sold, which under our code may be either actual or constructive.

1. The thing sold is clearly identified in the first paragraph of the contract proper. It transfers, assigns, conveys and confirms unto the American National Bank of Macon Georgia, etc., "all of the assets of every kind and description, including cash and cash items on hand at the close of business on August 1, 1914, bills receivable, bonds, real estate and personal property, and interest therein, and choses in action of all kinds including all the United States bonds now on deposit with the Treasurer of the United States as security for the circulation of the Commercial National Bank of Macon and for deposits of the United States deposits; to have and to hold the same unto it, the American National Bank of Macon, its successors and assigns, in fee simple forever."

To this contract was attached Exhibit "A,"which shows what the business of the Commercial National Bank amounted to in the way of deposits. The aggregate sum of the individual, bank, and savings depositors was $517,116.49. It will be remembered that the value of the bills receivable was fixed at the inception of the transaction, but it must have and did receive special examination during the ten days which elapsed before the making of the final contract.

2. The price to be paid was agreed on. It was the amount in liabilities of the Commercial National Bank of

every character. This was evident by a list of the liabilities attached to the contract.

3. The consent of the parties was given and expressed by their several signatures to the contract.

Lastly, the delivery was actual, the American Bank taking posession absolutely and completely of all the properties of every kind and character of the Commercial Bank on Monday, August 3, 1914.

Tried, therefore, by these simple essentials of a sale, the contract makes one complete sale in every particular.

But the presence of these essentials is not all in this contract that indicated a sale.

The second paragraph of the contract proper expressly contemplates liquidation and consolidation by the *purchase* of the assets of the Commercial National Bank. The word, "purchase" is the keynote to the construction of this contract, so far as words alone indicate its meaning. The word in its legal significance with respect to contracts of sale means and can mean nothing short of an absolute transfer of the title from seller to buyer. The words "convey," "sell," and "confirm," used in the sale of property, are not always inconsistent with a loan, but, used in a contract of this character, in connection with the word "purchase," they can have but one meaning, and this is, that the property is sold, conveyed and confirmed in pursuance of a purchase.

## XXV.

## THE RESOLUTION OF THE BOARD OF DIRECTORS OF THE AMERICAN BANK, ITSELF, IS INCONSISTENT WITH THE CREATION OF THE RELATION OF DEBTOR AND CREDITOR BETWEEN THE TWO BANKS.

We take from said resolution the following excerpts, to-wit:

"And said officers are further authorized to make such contract with the Directors of said association or with such liquidating agent as may be appointed for said association." (Record p. 81.)

No debt, for which the shareholders might have been made liable, could have been legally created, by contract with the liquidating agent of the Commercial and hence authority given by the Board of Directors to the officers of the American, to contract with such liquidating agent, proves that the creation of such a debt was not contemplated by the Directors of the American, when the resolution in question was passed.

Again said resolution contains the following:

"Provided, however, that this resolution shall not become effective until the other banks of the Macon Clearing House Association shall, by proper resolutions, agree to supply, in proportion to their respective capital and surplus, their proportionate share of cash and exchange that may be necessary to meet withdrawals by depositors not immediately redeposited in this association, and other cash demands to which this association may be required to respond."

Counsel for appellant argue that the above quoted provision is inconsistent with the idea of a purchase and sale. We do not think so. It merely indicates that the American bank was, under certain conditions, providing that the other banks of the city should put up a part of the purchase price. The consideration flowing to the other banks was the detriment to the banking interests in general that would naturally follow from the failure of another bank in the City of Macon. However, we do not contend that *this provision* of the resolution of the American bank's Directors illustrates the idea of purchase and sale, so much

as it is inconsistent with the idea of the relation of debtor and creditor, between the Commercial bank and the American bank. It certainly indicates that the American bank was taking unusual precaution to provide against any loss to itself, even temporarily, that might flow from the making of the contract with the Commercial bank; and strongly indicates that it was not looking to the Commercial bank or to its shareholders, at that time, for any protection against such losses. It is merely one of the many indications contained in the resolutions and in the contract that the relation of debtor and creditor between the Commercial bank and the American bank was never intended or contemplated.

In this connection, we beg to submit that it seems wholly inexplicable, if it was contemplated or intended to create the relation of debtor and creditor between the two banks, that a contract, so carefully drawn as the contract of August 11, 1914, evidently was, should have wholly failed to provide for the contingency of a deficit of assets. It made provision for the disposition of any surplus that might remain; it even attempted to preserve the stautory liability of the stockholders, for any deficit that might arise, and this proves conclusively that the contingency of a possible deficit was not overlooked; but it utterly failed to provide for any claim over against the liquidating bank, in case of a deficiency of assets. How easy it would have been to provide that, in such event, the Commercial should be liable to the American for such deficit, if it had been intended to create such a liability! Is it conceivable that the failure to do so was due to inadvertence? The answer to this question is found in the words of a portion of the resolution of the Board of Directors of the American bank, of August 1, 1914, which are as follows:

"Upon condition that said association transfer to this association, as cash or collateral for its notes, cash, cash items, bills receivable, bonds, real estate, and other assets, *sufficient in amount and in value,* in the estimation of the officers of this association, to fully protect and secure this association for any and all amounts so assumed," etc. (Record p. 81.)

No! The assets of the Commercial were to be fully examined and adjudged to be "sufficient in amount and in value to fully protect and secure" the American, for all liabilities assumed by it; and moreover the Commercial (as aptly stated by His Honor, Judge Evans, in his opinion in this case, Record p. 90):

"Bereft of business and of assets, it presented a sorry plight for a debtor who was expected thereafter to pay a substantial sum."

What need, what advantage could there be in creating a contingent debt against a mere shadow? Why not consolidate the Commercial with the American and thereby acquire, for the latter, the depositors, the business patrons of the former?

The question of the statutory liability of the shareholders was, evidently, not seriously considered, at the outset of the transaction, for that involved many complications and much uncertainty.

It may seem strange that the officers of the American, experienced and capable bankers, should have gone so far afield in their estimates of the value of the assets of the Commercial; but be it remembered that the valuation of these assets occured before the demoralizing effect of the European war had been felt by the business interests of the United States, and that many businesses were wrecked by the consternation and anxiety occasioned by it and paper,

theretofore considered good, became worthless, as a consequence. We dare say that, if the conditions had remained normal, the Commercial's assets would have readily realized enough to pay all of its bebts, and to spare.

Surely the Court will not feel called upon under circumstances, such as those enumerated ante, to *imply* an intention to create the relation of debtor and creditor, between the two banks in this case.

In this connection, see:

Schofield v. State Nat. Bank, 97 Fed. 282, 283, 286.

## XXVI.

## THE TRANSACTION WAS A LIQUIDATION FOR CONSOLIDATION.

In the resolution of the Commercial National Bank Lirectors, of August 1, 1914, we find the following expressions, to-wit:

> It is expedient for this association to go into voluntary liquidation under *section* 5220 and 5223 of the United States Revised Statutes." (Record p. 79.)
>
> To consider this question and the *consolidation of this association with the American National Bank of* Macon, Georgia, by the sale of its assets to said bank." (Record p. 80.)
>
> "To transfer to the American National Bank of Macon, Georgia, as cash, or as collateral for the notes of this association, *all of the assets of this association.*" (Record p. 80.)
>
> "Said American National Bank of Macon, Georgia, to *take over the business of this association.*" (Record p. 80.)

In the resolution of the American National Bank Directors, of August 1, 1914, we find the following expressions, to-wit:

That this association assume the payment of the deposits, bills payable and other liabilities of the Commercial National Bank of Macon . . . and agree to pay the same when and as the same are presented for payment, upon condition that said association transfer to this association . . . cash, cash items . . . and other assets, sufficient in amount and in value in the estimation of the officers of this association to fully protect and secure this association for any and all amounts so assumed." (Record p. 81.)

This association to take over the business of said association in the manner aforesaid." (Record p. 81.) In the contract between the two banks, of August 11, 1914, we find the following expressions, to-wit:

"For the liquidation of said association, under *sections* 5220 and 5223 of the United States Revised Statutes *for consolidation* with said American National Bank, and to transfer to said American National Bank *all the assets* of said Commercial bank." (Record p. 16.)

"And which said resolution further provided that said American National Bank should *take over the business* of said Commercial National Bank." (Record p. 17.)

"That in contemplation of the liquidation of said Commercial bank under *sections* 5220, 5221 *and* 5223 United States revised statutes, said Commercial National Bank . . . will procure proper resolutions . . . liquidating said association and *consolidating* the same with the American National Bank of Macon by the purchase of the assets of said Commercial National Bank by the American National Bank, but without providing for stock in the American National Bank

to be issued to the shareholders of the Commercial National Bank." (Record pp. 18, 19.)

"The said Commercial National Bank will also procure proper resolutions to be passed by said shareholders, appointing said American National Bank as liquidating agent for said Commercial National Bank in *said liquidation for consolidation* as aforesaid." (Record p. 19.)

In paragraph 1 of said contract, said Commercial National Bank transferred and conveyed to the American National Bank, absolutely and without any defeasance, "all of its assets of every kind and description," to be held "in fee simple, forever," under a general warranty of title. (Record p. 18.)

In paragraph 5 of said contract, said American National Bank, in consideration of the acts and agreements of said Commercial National Bank, assumed and promised to pay, "when and as the same are presented for payment, the depositors and other liabilities of said Commercial National Bank of Macon, shown in Exhibit 'A,' hereto attached;" and also assume "the redemption of the circulating notes of said Commercial National Bank." (Record pp. 11, 20.)

The stockholders of the Commercial bank, in the resolution passed September 30, 1914, expressly ratified and approved the resolution of their Board of Directors, of August 1, 1914, and the contract of August 11, 1914, between the two banks, *"in all respects."*

Section 5220 of the United States Revised Statutes, referred to supra, is as follows:

"Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

Section 5221 provides for notice of intent to dissolve, and is not material to be considered here.

Section 5223 is as follows:

> "An association which is in good faith winding up its business for the purpose of consolidating with another association shall not be required to deposit lawful money for its outstanding circulation; but its assets and liabilities shall be reported by the association with which it is in process of consolidation."

Section 5222 (not referred to either in the resolutions or in the contract) provides that.

> "Within six months of the date of the vote to go into liquidation, the association shall deposit with the Treasurer of the United States lawful money of the United States, sufficient to redeem all of its outsanding circulation," etc.

The Court's attention is directed to the fact that the Revised Statutes, Section 5220, provides for liquidation only, in which case the retiring bank is required to make provision for the bonds on deposit with the Treasurer of the United States. When, however, there is a consolidation under Section 5223, the other section cited in the preamble to the contract, the requiremnts of Section 5222 do not obtain. Not only is it stated that there was a consolidation by purchase, as provided by section 5223, but section one of the contract (p. 18 of Record) shows that the Commercial transferred, assigned, conveyed and confirmed these United States bonds to the American, a course permissible only under section 5223 of the Revised Statutes.

It appears, therefore, from the resolutions of both of the banks and from the contract afterwards entered into between them, pursuant to said resolution, all of which was

subsequently ratified and approved in all respects by the stockholders of the Commercial:

1. That the Commercial transferred to the American all of its assets of every kind and description.

2. That the American assumed all of the liabilities of the Commercial, not excepting the redemption of its circulating notes.

3. That the American took over the business of the Commercial.

4. That the transaction was expressly and repeatedly referred to by the parties themselves, as a *liquidation for consolidation.*

A consolidation occurs where the rights, franchises and effects of two or more corporations are by legal agreement combined into one whole and committed to a single corporation, the stockholders of which are composed of those (so far as they wish to become such) of the corporations thus agreeing, whether such single corporation, called a consilidated corporation, be a new one then created or one of the original corporations continued in existence with larger rights, capacities and powers."

Meyer v. Johnston, 64 Ala. 656.

Also 6th Am. & En. 801 (1).

Bonnett v. First National Bank, 24 Tex. Civ. App. 613; 60 S. W. 325, 326, 327.

Chicago, etc., Ry. Co. v. Ashling, 160 Ill. 373, 43 N. E. 373.

Central R. R., etc., Co. v. Ga. 92 U. S. 665, 23 L. Ed. 757.

10 Cyc. 302 (D).

"Where the act authorizing the consolidation does not specify the manner in which the consolidation is to

be consummated, the mode of consolidation is to be determined by the corporations."

6th Am. & En. (2d Ed.) 810.

It has been decided that a consolidation of national banks is authorized by section 5523 of the U. S. Revised Statutes.

Bonnett v. First National Bank, supra.

No method of consolidation is, however, provided and hence the parties to such a consolidation must decide for themselves, in a large measure, the plan to be pursued.

It is admitted that, in the absence of any provision to the contrary, in the statute regulating the consolidation or in the agreement between the parties, the ordinary effect of a consolidation is to make the stockholders of the constituent corporations stockholders of the consolidated corporation; but this is not a legal necessity and may be varied by contract or by statute.

In the instant case, the right to receive stock in the consolidated corporation was denied to the shareholders of the Commercial bank, by the terms of the contract. This was permissible and did not have the effect of changing the nature of the transaction.

Just here, we beg to suggest that the very fact that the American bank deemed it necessary to stipulate, in the contract, against the right of the shareholders of the Commercial to receive stock in the American, as a result of the liquidation for consolidation, seems to us to prove conclusively that it was the intention of the parties to the contract to effectuate a legal consolidation between the two banks. Otherwise such stipulations were utterly useless and foolish. It appears, moreover, from that provision in the contract, that the parties were fully advised as to the legal effect of a consolidation and that they contracted, with reference to that matter, deliberately and advisedly.

Counsel for appellant argue, however, that no reference was made to a section of the U. S. Revised Statutes, relating to consolidation, in the resolution of the stockholders of the Commercial, passed on September 30, 1914, which was necessary as authority for the liquidation; and that said resolution contains no statement tending to show that the stockholders of the Commercial, both dated September 30, 1914. One of these resolutions placed the Commercial in voluntary liquidation, under the provisions of sections 5220 and 5221 of the U. S. Revised Statutes, to take effect from that date, and appointed the American as liquidating agent, with provisions for bond, reports, etc. (Exhibit "E", pp. 82, 83 of Record). The other of said two resolutions recited the action of the Commercial's Board of Directors, in their resolution of August 1, 1914, and in the contract of August 11, 1914, and "in all respects ratified and approved" both said resolutions and said contract, We submit, therefore, that the argument of counsel for appellant, as aforesaid, is untenable.

## XXVII.

## THE RELATION OF DEBTOR AND CREDITOR COULD NOT LEGALLY EXIST BETWEEN THE TWO BANKS.

> "Where two corporations effect a consolidation and one of them goes entirely out of existence, and no arrangements are made respecting its liabilities, the resulting consolidated corporation will, as a general rule, be entitled to all of the property and answerable for all of the liabilities of the corporation thus absorbed."

Atlantic etc., R. R. Co. v. Johnston, 127 Ga. 392 (2). In the opinion, in the case last cited, the Court quotes

from Thompson on Corporations the following:

> "As already seen, the consolidation of two or more corporations is like the uniting of two or more rivers; neither stream is annihilated, but all continue in existence. A new river is formed, but it is a river composed of the old rivers which still exist, though in a different form. So it is with a consolidated corporation. A new corporation is formed, but not in the sense which works a destruction of the rights of action existing against the old ones. Independent of statute, the better view is that the new one is liable for any debts, obligations or rights of action of any kind existing in favor of third persons at the time of the consolidation, and may be sued at law or in equity, to enforce such rights and obligations without any agreement to become so answerable, and without any statute imposing the liability." Id. 396.

In this connection, see Pullman Palace Car Co. v. Mo. Pac. Ry. Co., 115 U. S. 587, 29 L. Ed. 499 (2). See also 6th Am. & En. ( 2d Ed.) 818 (4); 10th Cyc. 303 (E). 306 (IV).

If it be true that the American Bank became liable for all of the debts of the Commercial bank (and this liability was assumed by contract as well as imposed by law), a claim of indebtedness by the American against the Commercial would be, in legal effect, a claim by the American against itself. This is manifestly a legal impossibility.

## XXVIII.

## LIQUIDATION FOR CONSOLIDATION EXPLAINS ALL APPARENT INCONGRUITIES.

The trial judge, His Honor Beverly D. Evans, construed the transaction between these two banks as a sale of the assets and business of the Commercial to the Ameri-

can bank, but admitted that some of the language in the 6th paragraph of the contract of August 11th, might be somewhat incongruous with the purpose as expressed in the resolutions of the Board of Directors. Construing said 6th paragraph, however, in connection with the other paragraphs of said contract, and with said resolutions, Judge Evans reached the conclusion that the relation of debtor and creditor, between the two banks, was not created and that, hence, the transaction was, in legal contemplation, a sale. The opinion of Judge Evans was carefully considered and is well sustained and we recommend it to this Court as worthy of great weight.

Counsel for appellant, however, insist, with great tenacity, that the language of the 6th paragraph of said contract of August 11th, is inconsistent with the theory of a sale. They refer, particularly, to certain expressions used in said 6th paragraph, such as:

> "All of said assets to be *held as securiity by* said American National Bank for all advances made by it," etc.
>
> "It will apply said proceeds: (1) in repaying to itself all amounts advanced by it hereunder, *with interest thereon at the rate of 7 per cent per annum.*"
>
> "And that when all of said liabilities have been fully discharged it will account to the shareholders of said Commercial National Bank and from time to time pay over to said shareholders *pro rata* the suplus remaining in its hands from the proceeds of said assets."

To our minds, the apparent incongruity between the language of the 6th paragraph of said contract and the language of the other five paragraphs thereof and of the resolutions may be satisfactorily reconciled by accepting the

transaction as a *liquidation for consolidation,* thereby giving effect to the words of the parties themselves, as they repeatedly define the character of the transaction in the several writings relating thereto.

A liquidation for consolidation is a combination of two distinct processes in one. The first of these is liquidation.

> "In its general sense liquidation means the act or operation of winding up the affairs of a firm or company by getting in the assets, settling with its debtors and creditors, and appropriating the amount of profit or loss."
>
> 3d Century Dictionary, 3474.

In the case of Green v. Bennet, decided by the Court of Civ. Appeals of Texas, on April 7, 1908, the Court, in discussing sections 5220 *et seq* of the U. S. Revised Statutes, says:

> "It seems to have been intended that whenever the owners of two-thirds of the shares should agree that they do not desire to continue the business, they may, under the forms prescribed, terminate the existence of the bank and wind up its affairs; that is provide for the payment of its debts and distribution of the surplus of its assets among the shareholders."
>
> 110 S. W. Rep. 115.
>
> See also, Watkins v. National Bank, 51 Kan. 254, 32 Pac. 914, 915.

Moreover, it seems that during the process of liquidation, under section 5520, U. S. Revised Statutes, the corporate existence of the liquidating bank is maintained, for the purpose of winding up its business, until it is settled.

Central National Bank, etc., v. Conn. Mutual Insurance Co., 104 U. S. 54; 26 L. Ed. 693 (6); 702. And see

Chemical National Bank v. Hartford Deposit Co., 161 U. S. 1.

McCann v. Rogers, 15 Ky. L. Rep. 127.

Ordway v. Central National Bank, 47 Md. 217.

Merchants National Bank v. Gaslin, 41 Minn. 552.

Shappard v. Cage, 19 Tex. Civ. App. 206.

It seems, then, that the plan of procedure, as outlined in the 6th paragraph of the contract of August 11th, was in complete accord with the scheme of liquidation, as contemplated by section 5520 *et seq* of the U. S. Revised Statutes; and in following that course the American Bank, as liquidating agent of the Commercial bank, was merely doing what the law required should be done in such cases.

The second step in the process of *liquidation for consolidation* is to unite the constituent corporations into one; or where, as under the facts of this case, it is desired to continue the existence of one of the constituent corporations, with enlarged powers, franchises and business, to merge one of said corporatioins into the other, *after the process of liquidation has been completed.*

The effect of such a consolidation, or merger, as shown by the authorities cited under subdivision XXV. of this brief, is to merge the business, and even the corporate existence, of the consolidating corporation, into the consolidated corporation; or, as it is so aptly and beautifully expressed by Mr. Thompson, in his work on corporations:

"The consolidation of two or more corporations is like the uniting of two or more rivers."

If, during the process of the liquidation, and until the act of consolidation, it might not be wholly incompatible for the liquidating agent to hold a claim of indebtedness against the liquidating corporation, for advances made or authorized, yet, when two corporations are consolidated by the

merger of one into the other, it is no longer possible for the relation of debtor and creditor to exist between them. Any indebtedness that may have existed, prior to consolidation, would, of necessity be satisfied or extinguished by the consolidation. Otherwise we would be presented with the absurdity of a corporation being indebted to itself, for the two became one by the act of consolidation.

This theory of the case fully meets the requirements of one of the cardinal rules of construction of written instruments, to-wit:

> "What may be considered another aspect of the rule that the instrument shall be considered as a whole, is the requirement that every clause and even every word shall be given effect, if this is in any way possible, and no part will be rejected unless absolutely repugnant to the general intent. Consequently, such a general construction must, if possible, be adopted that every part will be in harmony therewith."
>
> 17 Am. & En. (2d Ed.) p. 7 (2).
>
> See authorities cited in note 3d Id.

THE MASTER'S REPORT WAS ERRONEOUS BECAUSE THE EVIDENCE DEMANDED A FINDING THAT NO RELATION OF DEBTOR AND CREDITOR EXISTED BETWEEN THE TWO BANKS; THE COMMERCIAL HAVING CEASED TO DO BUSINESS HENCE THE LIABILITY SUED UPON COULD NOT BE A DEBT, CONTRACT OR ENGAGEMENT OF THE COMMERCIAL WITHIN THE MEANING OF THE STATUTE.

## ARGUMENT

The insistence is here asserted that the Master predicated his report upon three unsound premises, which three

false premises will now be adverted to, leaving for later discussion the more specific criticism of the Master's report.

1. The Master, it will be found from a careful reading of his Report, refused to accept the substantial contentions of either the appellee or the appellants, deciding the cause upon a theory and construction of the contract not insisted upon by any of the parties, not set up in the pleadings, and not apparent to the discerning eye of appellate after its careful examination of the written agreement and the full text of the supporting resolutions.

The Master's ultimate conclusion was based to a considerable extent upon the provisions of the resolution of American Directors of August 1, 1914, exhibit "C" pages 51-62 of Record, as follows "or shall otherwise satisfactorily secure this association and so forth," a provision that was discarded when the written agreement of August 11, 1914, was executed, as is clearly seen from a reading of the Epitome of the American Resolution in the second preamble of the contract at page 21 of the Record.

2. The Master realized that the officers of the two banks contemplated and agreed upon a consideration for purchase on the part of American, a contract which could be made by the officers without authority from the stockholders. However, although the Commercial was delivered with all its assets to American on August 13, 1914, the Master found that the original contemplation of consolidation was never consummated.

The evidence shows that everything was done in consolidation, assets and business transferred, and that the transaction of purchase and consolidation could only be defeated by an interference "beyond the control" of the American, an event which never occurred. The shareholders ratified the contract and authorized the incidental liquidation

which was rendered necessary by the caution of the American. The consolidation project needed nothing more to be done. The Master did not and could not see that the transfer and delivery of the Commercial's assets was in execution of the contract for consolidation by purchase, a contract which could be made by the officers of the bank as well as in execution of the agreement for liquidation, which liquidation was *defacto* from August 1,—3, 1914, to September 30, 1914, and *de jure* afterward. And the Master did not and could not see that the consolidation to purchase was effective save only upon the happening of a stated event, which did not occur; and that if such defeating event did occur, then the American should hold the assets as security, treating as a loan the amounts which it had advanced in discharging the Commercial's liabilities.

3. The Master erroneously conceived that the decision of the Court of Appeals on the appeal of the American from the order dismissing the bill, was an adjudication of the case so that the issues of fact raised by the averments of the amendment and appellant's answers of the amendment were immaterial and irrelevant. By way of illustration the Master conceived that it was immaterial whether as alleged by the amendment;

(1) There was an agreement between the officers and finance committee of Commercial of the one part and the officers of the American of the other part, that the deficiency of sums realized on Commercial's assets as compared with the amounts being paid out by American should be carried as an overdraft and an indebtedness of the Commercial.

(2) That the Commercial continued to carry on a regular banking business in the usual and customary way, after August 1, 1914.

(3) That the original contemplation of the two banks was that notes should be given for amounts advanced by American.

(4) That the Commercial as such through its proper officers reported to the Comptroller of Currency, as an indebtedness of Commercial, the amounts advanced by American.

The Master realized and found that none of these material allegations of the amendment was supported by the evidence, but considered that the Court of Appeals had announced the law of the case independently of these considerations, and in reality upon the written documents independently of aliunde evidence.

## BRIEF SUMMARY OF EVIDENCE

In order that we may present a concise resume of the evidence as related to the issue made, it is necessary to call the attention of the Court to the recognized methods of consolidation of banks—State or National. Consolidation may be accomplished:

(1) By having the surviving bank issue its additional stock to the shareholders of the retiring bank, equal in value to the net value of the retiring bank's assets, that is to say the agreed value of assets less its liabilities. This plan is actually one of merger, necessitating the surrender of the charter of the retiring bank.

(2) By having both banks surrender their charters and combine their assets. A new charter is obtained and stock in the new corporation or association is issued to the stockholders of the two retiring banks, respectively, in the ratio of the agreed value of the assets of each bank, the net value being arrived at by deducting the liabilities of each bank from the agreed value of its assets.

Both of these courses result in a union which is legal in every respect.

(3) The third plan is known as a practical consolidation, and is such de facto rather than de jure, that is to say, while the plan is definitely recognized by the Comptroller of Currency, it is not one known in corporation law.

In this plan, which amounts really to a purchase, the surviving bank *usually,*

1—Agrees with officers of retiring bank as to value of assets of retiring bank—

2—Ascertains liabilities of retiring bank—

3—Pays to the retiring bank, or to its shareholders the excess of assets over liabilities.

Pratt's Digest of National Banking Laws, (1902) pp. 253-4; bottom p. 255; p. 95. See also 1920 edition of same work, p. 500, Sec. 472, par. 1; p. 503, bottom.

This is a consolidation without issue of stock which is here involved, according to contention of appellants.

The precise plan here indicated was not followed in the instant case.

Instead of following strictly the plan of actual consolidation, by purchase, just referred to, in the instant case, the officers of the two banks agreed:

(1) That the officers of the American would satisfy themselves that the assets of the Commercial "were sufficient in amount and in value" to make the American safe in the undertaking;

(2) To have the actual value of the assets determined by administration or liquidation, rather than by definite ascertainment made on August 1, 1914;

(3) That the American should pay off and discharge the Commercial's liabilities; and

(4) Pay over to the shareholders of the Commercial,

the contemplation being that the Commercial would retire from business on August 1, 1914, the excess of realization on the assets over the laibilities discharged, plus the expense of the administration, plus 7% on the amounts paid out by the American in advance of a full realization on the assets.

In other words, the plan adopted contemplated a cash payment to the shareholders of the Commercial at the end of liquidation, rather than a payment on a definite basis upon an estimation at the time the Commercial was taken over.

(1) The evidence showed that there had been several months before August 1, 1914, some negotations between E. Y. Mallary, President of Commercial and R. J. Taylor, President of American, with reference to a consolidation of the two banks. This was testified to by Mr. Mallary as shown at pages 700, 1, 2, 3, 4, 5 of the Record, and not denied by Mr. Taylor, but rather admitted by him, as shown at pages 905-6-7 of the Record.

(2) Averments of the original petition in the third paragraph, that on July 31, 1914, the Commercial officers applied to the American officers for a loan, is to a certain extent true and to a certain extent untrue.

The conclusion which would readily be drawn from this allegation which is indicated as a preliminary to the agreement between the officers of the two banks, under which the Commercial was taken over by the American, is that the loan which was applied for was general in its nature, of an indefinite amount, and contemplated a general pledging of the assets of the Commercial. The evidence shows, without conflict, that the loan of money which was asked by the officers of the Commercial, was of a definite amount, contemplated the pledging of certain definite col-

lateral, to-wit, The Commercial National Bank Building; and contemplated that the Commercial National Bank should continue in business, without abatement or restriction. This fact is definitely shown by the testimony of E. Y. Mallary, at page 701 of the Record, and is definitely shown in the testimony of R. J. Taylor, President of the American National Bank at page 924 of the record. A loan of $25,000 was actually made upon this definite collateral. This loan preceded the action of the Directors of August 1, 1914. With respect to this loan of $25,000, Mr. Taylor testified: "I said that was the last time a loan was spoken of, I don't remember any other time except *when we closed it up that night.*"

The Court is requested to examine closely the testimony of Mr. Taylor, to ascertain, if possible, any mention of a loan after the $25,000.00 transaction or any definite statement of a transaction which could be relied upon as a predicate for the liability of appellants.

(3) August 1, 1914, fell on Saturday. On August 3rd, 1914 (Monday), all the movable and usable assets and property of the Commercial National were moved to the banking house of the American National Bank. This fact is conclusively shown by the testimony of all of the witnesses; is distinctly admitted in paragraph four of the original petition; and will not be questioned by opposing counsel.

(4) On August 2, 1914, as shown at page 950 of the Record, in the Sunday issue of the "Telegraph," the American National Bank, "Macon's Million Dollar Bank," published a notice addressed to depositors and customers of the Commercial National Bank. This notice was prepared at the instance of Mr. R. J. Taylor, the President of the American, in the offices of counsel for the American. This advertisement, as will be noted, stated:

"We are pleased to announce that a consolidation of the business of the American National Bank and the Commercial National Bank of this City has been effected. The assets of the Commercial National have been taken over, and we will take care of all the business formerly handled by the Commercial National."

The advertisement further asserted that,

With the addition of these deposits (the deposits of the Commercial) the pre-eminence of the American National as the largest bank in Central Georgia has been increased. The money on deposit with the Commercial National has been transferred to us and we stand ready to pay your checks against same."

Request was then made that checks should be written on the blanks of the Commercial National for the time being, and for reasons which were shown in the evidence and will be adverted to.

(5) On the same date and in the same paper, there was published, over the name of the Commercial National Bank, an advertisement which was prepared with the announcement just referred to, under the same circumstances, and with the full co-operation of Mr. R. J. Taylor. This advertisement is shown at page 951 of the record and is likewise addressed to the depositors and customers of the Commercial National Bank.

As will be noted, this advertisement asserted that a "merger" has been "perfected with the American National Bank and this institution. All the assets of the Commercial National have been transferred to the American National, the deposits in the Commercial having been placed with the American National to the credit of our depositors, and the business of the Commercial National will hereafter be conducted at the offices of the American."

In bidding good-bye to the banking business, the Commercial officers make in this announcement the following statement:

"The officers and directors of the Commercial take this opportunity of expressing their sincere appreciation of the patronage which has been accorded, and bespeak the kindliest consideration of the American."

(6) The taking over of the business of the Commercial National increased very greatly the business of the American National, so that there would have existed a necessity for additional clerical force at the banking house of the American, even if there had not been under the contract the necessity of keeping a separate accounting of the amounts paid out to discharge the liabilities of the Commercial and of the amounts received in administering the assets of the Commercial, this accounting being necessary by reason of the obligation of the American to pay over the excess to the stockholders of the Commercial.

(7) As shown by the evidence in the case, and particularly that of Mr. W. T. Anderson, one of the directors and a member of the finance committee of the Commercial, at page 756 of the Record, Mr. Anderson called the attention of Mr. R. J. Taylor to the fact of the necessity for additional clerical force, and asked Mr. Taylor to give employment to the largest possible number of the former employees of the Commercial. Mr. Taylor consented to do this.

This testimony of Mr. Anderson was not denied by Mr. Taylor or by any other witness.

Reference is now made to this fact because of the great stress which has been laid upon the fact that certain of the employees engaged at work at the American's banking house after August 3, 1914, were men who had previously

been employed by the Commercial. The evidence shows that these men were acquainted with the customers and the accounts and that it was a matter of sound business that they should be employed by the American in the administration or actual liquidation of the Commercial.

(8) The record of evidence reeks with indisputable proof that August 1, 1914, was the last day on which the Commercial National Bank transacted a banking business.

(9) Every witness who was examined in the case testified that the Commercial National went into actual liquidation, beginning August 3, 1914, which was the first banking day after the resolutions of the Board of Directors.

This was the testimony of I. C. Souder, who was perhaps the principal witness for the appellee. See page 668, end of 2nd paragraph, of the record; the testimony of Creed Taylor, who was the accountant witness for the appellee, see page 637 of the record, as well as all the other witnesses who testified as to the matter of accounting.

(10) In connection with the administration or liquidation of the Commercial, particularly in view of the obligation on the part of the American to account to the shareholders of the Commercial for any overplus, it was necessary to keep the items involved in the liquidation or administration separate from the ordinary accounts of the American National. Under the testimony of all the witnesses, (as an example, see the testimony of Creed Taylor, at page 633, 2nd paragraph of the Record) the method of accounting which was used, or some substantial equivalent, was necessary in order that the American might perform the offices of liquidating agent, de facto and de jure, and render the overplus to the shareholders of the Commercial.

In other words, under the evidence, the method of keeping the debits and credits, showing the balance as an

overdraft, or otherwise, was entirely without significance in the matter of construing the contract or real agreement between the parties.

(11) As shown at page 948 of the Record, E. C. Scott, the Cashier of the American National Bank, addressed to the depositors of the Commercial a letter in which he stated:

"We take pleasure in announcing that this bank has absorbed the Commercial National Bank of this City. On and after this date all checks against deposits in the Commercial National Bank will be honored upon presentation at this bank."

In this letter, Cashier Scott stated that the resources of the American were now increased to nearly five million dollars.

It is obvious that the cashier of the American, in arriving at the amount of resources of the American, added to the resources of that bank, on July 31, 1914, the entire resources of the Commercial.

The record shows that this was not a letter of loose expression, but that the language thereof was carefully chosen, the form of the letter being the result of deliberation and discussion amongst the officers of the American.

With respect to this discussion, the Cashier testified, as shown at page 686 of the Record:

"That letter was written after the transaction had been agreed upon between the officers and directors of the two banks._____by which the American took over the assets of the Commercial_____, there was one or two forms of letters gotten up that were not sent out_____if this form of letter went out, that is the one that was deliberately and advisedly prepared."

As shown at page 697 of the Record, J. C. Hinton,

who was one of the depositors as well as a shareholder, identified positively the letter which has just been referred to as being the communication sent out by Cashier Scott.

This letter was written on August 1, 1914, (Saturday) and was posted at 2:00 P. M. on Augsut 2, 1914, (Sunday.)

(12) According to the testimony of Mr. R. J. Taylor, President of the American, Counsel for the American collaborated with the directors of the Commercial on August 1, 1914, concerning the form of resolutions which were adopted by the Commercial's Directors. See page 927 of the Record.

At the Directors' meeting of the Commercial on August 1, 1914, as shown at page 923 and 957 of the Record, there was passed a resolution ordering that there be sent to the shareholders of the Commercial a notice of the meeting which was held on August 12, 1914. This notice clearly and distinctly set forth that the purpose and only purpose of the meeting was "the consolidation of this bank with the American National of Macon, Georgia, by the sale of its assets to said American National Bank and the assumption of its liabilities in taking over its business by said bank, including the liquidation of said bank under section 5220 and Section 5223 of the United States Revised Statutes."

It was in accordance with this resolution, solely, that the shareholders' meeting of August 12, 1914, was held.

(13) The former employees of the Commercial who followed the assets of the Commercial to the banking house of the American, were employed and discharged by the officers of the American. Under the testimony of Mr. R. J. Taylor, President of the American, as shown at bottom of page 912, and 913, of the Record, and under the testimony of Mr. L. P. Hillyer, the Vice-President of the

American, as shown at page 883 of the Record, this force of employees were entirely directed by Mr. Taylor for the first three or four days, beginning October 3, 1914, and after that time were under the absolute direction of Mr. Hillyer, Mr. Hillyer taking charge as soon as he returned from New York.

(14) None of the officers of the Commercial, the President or either of the Vice-Presidents ever had anything to do with the management of the Commercial's assets after the transfer to the American.

See the testimony of E. Y. Mallary at page 705-6-7 of the Record. This testimony was never controverted. It will be noted that Mr. Mallary was requested by Mr. Taylor to come to the American Bank for a few days after August 3, to meet the former customers of the Commercial and to exercise his offices in inducing these customers to make their deposits with the American.

(15) E. N. Lewis, who had been the Cashier of the Commercial, and who for certain purposes under the provisions of a portion of Section 6 of the contract, (found at page 25 of the Record,) was obligated to execute such documents as might be necessary to carry out the terms of the contract, was, as to all accounting or administration work done after August 3, 1914, under the dominion and control of the officers of the American and was finally discharged by the officers of tht American. Both E. N. Lewis and Vice-President J. J. Cobb, died previous to the beginning of the taking of testimony.

(16) The payroll carrying the salaries of the clerical force who had previously been employees of the Commercial and who were retained in the liquidation, on and after August 3, 1914, as well as their expense accounts, were indicated as a debit against the Commercial. The evidence

shows that this was entirely proper in order to keep definite status of the expense of administering the affairs of the Commercial, this being one of the deductions under the contract to be made by the American from the excess of assets over liabilities before any accounting could be made to the shareholders of the Commercial.

The Record clearly shows that none of these expense items were paid until they had received the approval of the vice-president or some other officer of the American, and the Master so found.

(17) The resolutions of the Commercial's Directors of August 1, 1914, as shown at page 535, 536, of the Record, definitely showed the purpose of consolidation of the two banks.

(18) As shown at page 557 of the Record, the directors of the American, in the course of a resolution, stated in words, that the Commercial was (therefore) absorbed by the American.

(19) The fact that the consolidation of the two banks was the main purpose of the contract and that liquidation was merely an incident, is shown by the resolutions of the American Directors which appear at pages 557 and 558 of the Record.

(20) The effective date of the plan of consolidation and the effective date of the purchase is shown by the resolution of the American Directors, which appears on pages 558 and 559, it being here distinctly shown that the taking over of the bonds of the Commercial lodged with the circulating notes of the Commercial, was based on the market price of August 1, 1914.

(21) As shown at bottom of page 559 of the record, it was the American which was engaged in winding up the affairs of the Commercial, and not the Commercial itself.

This statement is made by Directors of the American at their meeting on August 1, 1914, long prior to the formal two-thirds vote of the Commercial shareholders, on September 30, 1914.

(22) In support of the averment in the amendment that the Commercial made reports to the Comptroller of Currency in which an indebtedness to the American was asserted, the appellee offered evidence which is shown at page 948 of the record. This evidence clearly shows that the reports referred to were made by the American National Bank and are shown to be self-serving declarations made nearly three years after the American took over the Commercial.

(23) The letter of the President of the American to the Comptroller of Currency, shown at page 995 of the Record, shows clearly and definitely that the contract was one of consolidation, without issue of stock in the American, and coupled with an incidental liquidation.

The court will note that in this letter, Mr. Taylor states to the Comptroller that the liabilities of the Commercial amount to approximately one million dollars, and its resources appear to be sufficient to discharge these liabilities, although that Bank is without ready money or assets available for that purpose.

(24), At pages 997 and 998 of the Record, there is shown a letter of President Taylor of the American, written to the Comptroller of Currency, on August 5, 1914. This letter shows that the American had absorbed the Commercial. This letter shows that the directors of the American "were fully convinced that tthe Commercial's assets were amply sufficient to pay all liabilities, although the capital stock may be somewhat impaired."

This letter shows that the proposal was the liquidation

under Section 5220 and Section 5223 of the Revied Statutes. Section 5223 relates to consolidation.

This letter shows that the consolidation was to be made without issue of stock of the American, and that the excess of assets over liabilities—President Taylor believing that there would be an excess—would be disbursed "pro rata" to the shareholders.

(25) The letter of the Comptroller of Currency written on August 6, 1914, as shown at pages 998, 999 of the record, clearly shows that he definitely understood the plan involved to be consolidation and purchase without issue of stock.

This is shown also by the Comptroller's letter on August 7, 1914, appearing at pages 999 and 1000 of the Record.

This same fact is shown by Mr. Taylor's letter of August 8, 1914, immediately following the last designated letter.

It will be noted by the Court that the entire correspondance with the Comptroller of the Currency, prior to the time when it became apparent that the American had made a bad trade, showed the true nature of the contract. After it became apparent that the American had made an unwise agreement, the tone of the correspondence underwent a decided change.

(26) The Master found that:—

"There was no agreement between the officers of the American National Bank and the officers and Finance Committee of the Commercial National Bank, that the amount so advanced by the American should be carried by the American National Bank as an overdraft of the Commercial."

There was no exception filed by the American National Bank to this finding of the Master, (Page 206 of the Re-

cord). And in pursuance of the above finding of fact, he reported as follows:

"Two of the allegations of the amendment to the plaintiff's bill have not been sustained by the proof. One is, that it would be found impracticable to give notes for the advances made by the American, and that by agreement the amount was carried as an overdraft against the Commercial. The other is as to the resolution authorizing the sale of the Commercial's building."

This last may be found on page 262 of the Record.

(27) There are but two embarrassing incidents in the Record:

(a) The alleged Minutes of the meeting of shareholders of the Commercial held on August 12, 1912, and found on page 524, et seq. of the Record, contained the statement that W. T. Anderson asserted to the stockholders that the American relied in its undertaking upon the liability of the stockholders.

The evidence showed that G. S. Derry, who is alleged to have acted as secretary at that meeting and who prepared the minutes, was not an officer or employee of the Commercial. These Minutes were never verified by Mr. Derry, nor were they presented for approval or approved by the presiding officer of the meeting.

The evidence in the case shows that Mr. Anderson did not make any such statement. See page 759 and 760 of the Record.

(b) The Minutes of the stockholders' meeting of the Commercial shareholders, on September 30, 1914, shown at pages 572, et seq., of the Record embodies a resolution which states as a preamble that the Directors of the Commercial by resolutions of August 1, 1914, transferred and assigned to the American all assets of the Commercial as

security for the liabilities of the Commercial, and states that this was done in contemplation of voluntary liquidation under the provisions of Section 5220, 5221, of the U. S. Revised Statutes.

It will be observed that this meeting of the shareholders was held two months after the Commercial Bank had retired and that the purpose of holding this shareholders' meeting was to perform the purely formal act of casting a two-thirds vote for the liquidation of the Commercial, in accordance with the provisions of law, a liquidation which had in fact been in progress since the 3rd of August, 1914. At the time of the taking of testimony, Mr. A. W. Lane, who presented this resolution, was dead, so that neither the appellees nor the court could have benefit of Mr. Lane's testimony. There is further evidence that this resolution was prepared in the office of the counsel for the appellees, and in view of the alarming developments in the matter of administering the affairs of the Commercial. This statement is made in view of the fact that the reference to the action of the Commercial's directors, on August 1, 1914, to all appearances deliberately eliminated the feature of consolidation and deliberately eliminated the reference to Section 5223 of the Revised Statutes, which provides for consolidation, despite the fact that the full text of the resolution referred to definitely shows the feature of consolidation and definitely refers to Section 5223 of the Revised Statutes.

It is fair to say that none of the shareholders paid any particular attention to the verbiage of this resolution. Their bank was gone and could not be restored. They were met for the purpose of casting a second vote for liquidation and for approval of contract, their previous action of August 12, having proven insufficient because of the lack of notice.

Mr. E. Y. Mallary, the president of Commercial, who made this contract for the Commercial, was absent from the

State of Georgia and did not attend this meetting, as shown at page 776 of the Record.

## REFERENCES TO THE TESTIMONY

Showing that the Commercial went out of the banking business on August 1st, and after that *was not in active operation, transacting* business in the usual customary way. Mr. R. J. Taylor, President of the American testified as follows:

"The Commercial went out of business on Saturday August 1st, 1914; That was the last day of business with them." Record p. 923—bottom page.

Also in his letter to the Comptroller dated 5th day of August, 1914, and also reported in Master's Report—Record p. 997.

Leon S. Lure, a director and chairman of Finance Committee of the Commercial, testified, that the Commercial went out of the banking business on August 1, 1914.

Record Pages 732—734.

At same place he testified:

He never made any agreement as an officer or member of the Finance Committee of Commercial, that any balance in the accounting should be carried as an overdraft by the American or as an account due to the American or that it should be carried as loans and discounts or in statement as resources.—Record p. 732—733.

W. T. Anderson, another director and member of the Finance Committee testified: He had never as member of the Finance Committee or as a director agreed with any officer of the American that any balance in the accounts should be carried as an overdraft or as loans and discounts or as an item due by the Commercial to the American, Record pp. 768—769—757.

That the Commercial's Stockholders' Committee had no authority to make any such agreement. Record p. 769.

Anderson testified:

That Lewis and others who had been connected with tthe Commercial did not after August 3rd, perform any function, except as a part of the administration under the direction of the officers of the American. Record p. 756—, 757—758.

That the Commercial operated as a going concern for the last time on Saturday, August 1st, and on August 3rd, the assets of the Commercial were transferred to the American, bag and baggage, and that the Commercial did not transact any further business.

Record p. 756—769.

L. O. Benton, another director and member of Finance Committee:

That in his dealings with the officers of the American nothing was ever said with reference to the American lending money to the Commercial, or that the American was holding any assets as purchaser.

Record pp. 805—806—822—823.

That after August 1st, 1914, and the taking over by the American of the assets of the Commercial, there was no chance whatever on August 12th, to withdraw the affairs of the Commercial from the American and to begin business again or to put the bank on its feet again.

Record p. 825.

At no time after Augustt 1st, not for two weeks nor from any other time was the Commercial in the performance of its functions as a bank and transacting business in the usual and customary way.

Evidence Record. p. 825.

That the Commercial went out of business on August 1st, 1914.

Record, p. 825.

That when on August 7, he applied to the officers of the American, Mr. Taylor and Hillyer, at the American Bank to have certain shares of stock transferred on the books of the Commercial, then in possession of the American, he was told by Taylor and Hillyer that stock could not be transferred because the Commercial was out of business.

Record, p. 805.

He then asked these officers of the American to be permitted to see the books of the Commercial and was told by them, that the Commercial had no books; that the books were the property of the American.

Record p. 806.

These statements not denied by Taylor or Hillyer.

Souder;—

Between August, 1st, and August 3rd, the entire assets of the Commercial were changed—the whole bank was changed from the Commercial to the American.

Record p. 805.

That the Commercial did not make any new loans or collections after August 3rd, for the reason that the Bank began liquidation on August 3rd.

Record p. 808.

That the method of dealing with the deposits and checks adopted by the American with the Commercial's affairs, the depositing of money paid on bills receivable, the paying of expenses, account by the o. k.'d checks of the Commercial by the officers of the American, was not in accordance with the usual and customary way of conducting a banking business—that he never heard of such a thing before.

That the method adopted would well be the proper way if there was a sale with the obligation on the part of the American account for the overplus of stockholders.

DeBorde;—

That the Commercial ceased the banking business on August 1st, 1914, and that he went to work with the American on August 3rd.

Record p. 777.

No new accountts were opened after August 1st.

J. F. Lewis, a member of the stockholders' Committee:-

The Commercial went out of the banking business August 1st, 1914.

Record p. 868.

Mr. Mallary, President of the Commercial testified, "That the Commercial had absolutely ceased to function as a bank on August 1st, 1914.

Record p. E.—704—771—772—774—775.

That when the written contract was drafted, and when it was presented to him for his signature, the Commercial was out of business, and that at that time the American had the bank and all its assets."

Record p. 729. --

He, as president of the Commercial, did not make any agreement with any officer of the American that any balance in the accounting should be carried as an overdraft, or that any net balance should be in loans and discounts; that he was never asked to make any such agreement.

Record pp. 732—733.

That Lewis, the former cashier of Commercial, was not authorized or expected to do anything more than to transfer all these assets to the American and to transfer all balances; that the only convenient way to transfer a New York balance was by the check of Lewis, cashier, and that this was done as provided in the contract. That Lewis had no authority to do anything else.

Records pps. 707—708.

That he had no supervision or authority over anything in which the records were kept; or the handling of the money: or with any part of the business conducted by the American.

Record p. 707.

That he had no supervision or authority over anything that was done by the former employees of the Commercial; but that such supervision was done by L. P. Hillyer, Vice-President of the American, and other officers of the American, without consulting Mr. Mallary; that he had no supervision whatever over Lewis or Souder; nor did Cobb, the Vice-President of Commercial, exercise any.

Record p. 707.

That no mention of giving of notes was ever made by any officer of the American.

Record p. 707.

Respectfully submitted

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Supreme Court of the United States

OCTOBER TERM, 1945

No. [redacted]25

W. H. HIGHTOWER, B. A. WRIGHT, C. H. ANDREWS, ET AL.,
APPELLANTS,

*vs.*

THE AMERICAN NATIONAL BANK OF MACON, GEORGIA.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR APPELLEE.

CHARLES H. PARK,
GEORGE E. JONES,
Solicitors for Appellee.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1922.

No. 264.

W. H. HIGHTOWER, B. A. WRIGHT,
C. H. ANDREWS, ET AL,
APPELLANTS,

VS.

THE AMERICAN NATIONAL BANK OF
MACON, GEORGIA.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

# *BRIEF FOR APPELLEE.*

## *STATEMENT OF THE CASE.*

### THE QUESTION

This record presents only one question:
*Under the contract, as understood and construed by the parties, is the American National Bank a creditor of the Commercial National Bank and entitled as such to enforce the statutory liability of its shareholders?*

Appellants, shareholders of the Commercial Bank, contend that the American Bank purchased the assets of the Commercial. Appellee contends, and the Circuit Court of Appeals holds, that the assets were pledged to secure the American for amounts advanced by it for the payment of the liabilities of the Commercial which it had assumed.

Two decisions of the Fifth Circuit Court of Appeals are under review. The first reversed the judgment of the District Court dismissing the bill. The second affirmed the final decree holding the shareholders liable to an assessment.

## HISTORY OF THE SUIT

The suit was filed by the American National Bank of Macon, Appellee, hereinafter called the American, against the Commercial National Bank of Macon, hereinafter called the Commercial, and Appellants and others, the shareholders of the Commercial, under the Act of June 30, 1876, (§9807, Comp. Stats.), the Commercial having been placed in voluntary liquidation by a vote of its shareholders, as authorized by §§5220, 5221, R. S. (§9806. Comp. Stats).

The bill, in the nature of a creditor's bill, was filed by the American as a creditor on behalf of itself and all other creditors, in equity, in the Court of the United States having original jurisdiction for the district in which the Commercial was located, this being the remedy and the procedure provided by the Act of 1876, *supra.*

To the bill was attached the contract between the two banks signed August 11, 1914. (Tr. p. 20).

Motions to dismiss the bill were sustained by District Judge Evans, who held that the American purchased the business and assets of the Commercial and "that under the contract no relation of debtor and creditor was created or intended to be created." (Tr. p. 70).

Before the order dismissing the bill in accordance with this opinion was entered, the plaintiff amended the bill by attaching as exhibits thereto copies of the resolutions of the boards of directors of the two banks pursuant to which the contract had been executed, and copies of the resolutions of

the shareholders of the Commercial ratifying the action of the directors and placing the bank in voluntary liquidation; and by setting up the course of dealing between the two banks, and the contemporaneous construction placed upon the contract. (Tr. p. 53).

The District Judge adhered to his ruling in a supplemental opinion (Tr. p. 79); and a decree was entered dismissing the bill. (Tr. p. 83).

On appeal this decision was reversed (Tr. p. 1167), *in American National Bank v. Commercial National Bank,* 254 Fed. 249, the Court of Appeals, speaking through Walker, C. J., saying:

> "The contract contains expressions and provisions which do not seem to us to be reconcilable with the existence of an intention other than that the making by the American Bank of the agreed disbursements in taking care of the liabilities of the Commercial Bank was to have the effect of creating a debt or debts owing by the latter to the former."

Referring to the course of dealing outlined in the amended bill the Court holds:

> "The averments of the bill show that both parties to the contract from the commencement of performance under it, treated the payments made by the American Bank as having the effect of making it a creditor of the Commercial Bank."

An order reinstating the bill, in accordance with the Mandate from the Court of Appeals, having been entered (Tr. p. 85), the defendants made answer thereto. These answers virtually admit the statements of fact set up in the amended bill, but deny that under the facts admitted the American is a creditor of the Commercial, and as such en-

titled to enforce the statutory liability of the shareholders. (Tr. pp. 87-146).

The case was referred to the Master. After a full hearing, he filed an elaborate and well considered report, (Tr. p. 150), in which he found: that the allegations of the amended bill were fully sustained; that the American is a creditor of the Commercial and is entitled as such to enforce the statutory liability of its shareholders; that the amount of the Commercial's debt to the American is in excess of its capital stock of $300,000.00, and that therefore an assessment of 100% should be levied against the shareholders.

Ninety-one exceptions to the Master's report, occupying 214 pages of the printed record (Tr.pp. 296-510), were filed. None of these exceptions seriously question the correctness of the facts as found by the Master. They set up in every conceivable way that under the facts as established by the evidence, the American purchased the assets of the Commercial and therefore is not a creditor.

These exceptions were all overruled by the District Judge and a final decree entered confirming the Master's report and awarding judgment in favor of the American against the Commercial and its shareholders, in accordance with the findings of the Master. (Tr. p. 511).

This decree was brought under review by the second appeal and was affirmed, the Court of Appeals, speaking through Bryan, C. J., holding that:

> "The transactions are inconsistent throughout with the theory of a sale * * * We are of opinion that the decree of the court is well sustained by the evidence and it is therefore affirmed." (Tr. p. 1171).

*Hightower v. American National Bank*, 276 Fed. 371.

## THE ERRORS ASSIGNED

Appellants assign error (Tr. p. 1178), on both decisions of the Circuit Court of Appeals. All the assignments, however, raise but the single question, that under the contract between the Banks, as understood and construed by the parties thereto, a consolidation or merger of the two banks was effected by the purchase of the assets of the Commercial by the American, and that, therefore, the American is not a creditor of the Commercial and is not entitled to enforce the statutory liability of its shareholders.

## BRIEF OF THE ARGUMENT

### PROVISIONS OF THE NATIONAL BANK ACT

The differences as to the construction of the contract between the two banks are due in large part to a failure to keep in mind the provisions of the National Bank Act, and a lack of appreciation of what can and cannot be done thereunder.

For convenience of reference the relevant sections of the Act and its amendments are cited.

The original National Bank Act of 1864 made the shareholders individually responsible equally and ratably

> "for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein in addition to the amount invested in such shares."
>
> §5151 *U. S. R. S.*

This section was superseded by the Federal Reserve Act (Act Dec. 23, 1913. 6, §23), but the shareholders' liability was again provided for in practically the same language.

§9689 *U. S. Comp. Stats.*

The original Act made no provision for enforcing the individual liability save in cases where a receiver was appointed by the Comptroller for a bank which had defaulted in the payment of its circulating notes.

§5234 *U. S. R. S.* (§9821 *U. S. Comp. Stats*).

It was held, however, that upon a creditor's bill, under the general equity powers, the Court could enforce such liability for the benefit of creditors.

*King* v. *Pomeroy*, 121 *Fed.* 287 (8 *C. C. A.*)

The original Act authorized the shareholders to place the bank in voluntary liquidation.

> "Any Association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

§5220 *U. S. R. S.* (§9806 *U. S. Comp. Stats.*).

This is the only method provided and it is exclusive.

The next section made provision for notice to be given to the Comptroller of the Currency and notice to creditors by publication in New York and in the city in which the bank is located.

§ 5221 *U. S. R. S.* (§ 9808 *U. S. Comp. Stats.*).

It was provided in the original Act that within six months after the vote to go into voluntary liquidation the bank should deposit with the Treasurer of the United States lawful money sufficient to redeem its outstanding circulation.

§5222 *U. S. R. S.* (§9809 *U. S. Comp. Stats.*)

The Act also provided for the cancellation of the circulating notes when money should have been deposited as re-

quired by the preceding section, and for the re-assignment of its bonds to the Association.

§5225 *U. S. R. S.* (§9811 *U. S. Comp. Stats.*).

By the Act of July 14, 1870, it was provided that:

> "An association which is in good faith winding up its business for the purpose of consolidating with another association shall not be required to deposit lawful money for its outstanding circulation, but its assets and liabilities shall be reported by the association with which it is in process of consolidation."

At the time the contract in the instant case was entered into, this was the only reference to *consolidation* found in the Act or any of its amendments. And it will be seen that this section did not authorize a "consolidation" as the term is used in the law.

"Consolidation," when applied to corporations, means "actual corporate union." Its "legal effect is to extinguish the constituent companies and create a new corporation with all the property, liabilities and stockholders of the old companies."

*Rawle's Bouvier's Law Dictionary, p.* 2202.

This section contemplates the continued existence of the liquidating association, and not a merger of the association with the other bank with which it proposes to unite. It contemplates that the association itself shall wind up its own affairs. It simply relieves it from depositing lawful money to cover its circulating notes where the circulation is assumed by another bank to whose credit the bonds deposited to secure the circulation are transferred.

The correctness of this assumption, we think, is established by the amendment of 1918, the title of which

is "An Act to Provide for the Consolidation of National Banking Associations." This Act authorizes a consolidation in the legal sense, the constitutent associations being extinguished and a new association being created with all the property, liabilities and shareholders of the old associations.

The Act of June 30, 1876, authorized the appointment of a receiver for a bank by the Comptroller under a variety of circumstances not theretofore provided for, which receiver was authorized, when necessary, to enforce the personal liability of the shareholders.

The second section of this Act of June 30, 1876, provides that when any National Bank shall have gone into voluntary liquidation (under §5220), the individual liability of the shareholders may be enforced by any creditor by a bill in equity in the nature of a creditor's bill, brought by such creditor on behalf of himself and all other creditors, against the shareholders in any court of the United States having original jurisdiction in equity in the district in which such bank may have been located.

§9807 *Comp. Stats.*

It is under this provision of the Act of 1876 that this bill is brought.

**SHAREHOLDERS ARE LIABLE FOR AN OBLIGATION INCURRED TO PAY BANK'S INDEBTEDNESS.**

Under § 5220 R. S. quoted *supra* a national bank can be placed in liquidation only by the two-thirds vote of its shareholders. And this must be had, under the regulations adopted by the Comptroller of the Currency, at a special meeting called for the purpose upon thirty day's notice. Until such meeting is held and the requisite vote is taken the bank cannot be liquidated either for consolidation with

another bank or otherwise. But a bank which is in need of funds to meet its pressing demands may arrange for the assumption and payment of its liabilities, and may secure the creditor advancing the money by a pledge of its assets, and the debt of this creditor is a "contract, debt or obligation" of the bank, for which the shareholders are liable. That has been settled by the decision of this Court in

*Wyman v. Wallace,* 201 *U. S.* 230, 50 *L. Ed.* 738.

Affirming

*George v. Wallace,* 135 Fed. 286(8 C. C. A.),

in which the question is discussed at length and the facts are fully set out.

In the instant case, as in the case cited, the contract was made in contemplation of liquidation and the effect of the contract, as stated by Mr. Justice Brewer, was to substitute one creditor for many, the substitution being one which the bank was authorized to make.

Appellants contend that "the all important conclusion which was reached by the Court, and which distinguishes the case from the one at bar, is shown in the following excerpt from the opinion of the Court, to-wit:

> "The borrowing of money by the American Bank did not necessarily put it into liquidation. It had a large amount of assets, and if the real had equalled the nominal vaue of these assets it would have been enabled after discharging its obligation to the Union Bank to continue business. But on examination (after the loan had been obtained), the stockholders felt that it was wiser to stop at once. But that decision did not at all impugn the wisdom or bona fides of the transaction by which the money was obtained to pay off the pressing demands of the American Bank."

The situation in which the Nebraska bank found itself was identical with that of the Commercial. It was embarrassed and needed money with which to meet its pressing demands. The nominal value of its assets exceeded its liabilities by a considerable sum but the real value was much less. The Commercial was also in need of ready money to meet pressing demands. Its nominal assets exceeded its liabilities by over $400,000.00. In order to secure the money needed to pay its depositors and other liabilities the boards of directors of both banks transferred every asset which it had. The Nebraska bank sold some of its best paper outright to the Union Bank; the rest it transferred to the Union's president as security for funds advanced by the Union. It did not retain in its own custody a single asset or a single dollar. The Commercial pledged all of its assets but retained the physical custody of them, and itself paid off its depositors and bills payable with funds supplied by the American. The Nebraska bank gave up its banking house and the Union Bank immediately took possession of it and conducted its own business therein. The American set apart for the use of the Commercial a portion of its own banking room, of which the Commercial took possession and in which it conducted its business. The shareholders of both banks met in some sixty days, ratified what their directors had done and voted to go into voluntary liquidation.

This Court held that the debt incurred by the Nebraska bank to secure the money with which to pay its pressing demands was a "contract, debt or engagement" for which its shareholders were liable. By the same token the debt which

the Commercial incurred to the American is also one for which its shareholders are liable.

Appellants quote from the opinion in

*Richmond v. Irons,* 121 *U. S.* 27; 30 *L.Ed.* 864,

to the effect that the contracts, debts or engagements for which shareholders are individually liable are such "as have been duly contracted in the ordinary course of business."

In this case after the bank had gone into voluntary liquidation by the vote of its shareholders as provided by § 5220 R. S., the president settled with various creditors by transferring to them in *absolute extinguishment* of their claims certain commercial paper belonging to the bank. In some instances this paper was endorsed or guaranteed by the Bank. With some of the creditors settlements were made by the individual note of the president, likewise endorsed or guaranteed by the bank. These creditors brought suit on this guaranty or indorsement of the bank and recovered judgments and undertook to prove these judgments in the receivership case. The Court held that such settlements as these extinguished the original indebtedness, and that the new contracts upon which suit was brought having been made after the bank had gone into liquidation were not such contracts as could be enforced against the shareholders.

In a comparatively recent case, the Circuit Court of Appeals for the Eighth Circuit held:

> "The transfer by a bank, not able to meet its obligations, of all its property and assets as security to another bank, which assumes its indebtedness, is not a voluntary general assignment of the business and affairs of the bank * * * and is not ultra vires * * * and that an indebtedness for money borrowed to pay

debts is contracted in the ordinary course of business and the stockholders are liable."

*Harris v Briggs*, 264 *Fed.* 726 (8 *C. C. A.*).

A clear statement of the right of directors to provide for the debts of the Bank in advance of liquidation is made by the Georgia Court of Appeals:

> "While a bank may not transfer its assets for the purpose of consolidating with another bank without the consent of two-thirds of the stock of each bank (Code § 2303), it is competent for the directors to arrange for the payment of its liabilities if the bank itself is unable to discharge the liabilities in due course, and for this purpose it may borrow money or arrange for such payment by another bank. (See Wyman v. Wallace, 201 U. S. 230.)"

*Amos v. Continental Trust Co.*, 22 *Ga. App.* 348 (5).

The Court had under consideration the contract between the Continental Trust Co., and the Commercial & Savings Bank, closely allied to the American and the Commercial, respectively, made at the same time and in practically identical language with the contract in the instant case.

Before undertaking to discuss the facts of the instant case one other case should be distinguished.

*Schofield v. State National Bank*, 97 *Fed.* 282 (8 *C. C. A.*)

Appellants' chief reliance is on this case. When properly understood, it is not antagonistic to the position which we take in this brief, and does not support the contentions of appellants. The misconstruction of the case arises from a failure to keep in mind the facts and to interpret the language of the Court in the light of these facts. Briefly, the case was this: Negotiations were pending between the

State and the Union Banks for the assumption by the latter of the indebtedness of the former in consideration of the transfer of certain live assets sufficient to pay the debts assumed. It was not contemplated that all the assets should be transferred, but that the Union Bank should select enough of the cash and live assets to pay itself for amounts advanced. There was not a suggestion of accounting to the shareholders for any overplus of these assets, but there was to be, as appears from the negotiations and the resolutions of the two banks, an absolute transfer of certain described assets in payment of the debt incurred in the assumption of specified liabilities. This is clear from the letter of the President of the Union Bank, which was adopted in effect by the resolution of the State Bank. This proposed that "until we can be satisfied in the selection of paper to reimburse us for the assumption of your liabilities, you secure us by your entire assets." The resolution of the State Bank authorized the President and Cashier "to carry into effect the proposed assumption of the business on the general basis of paying its deposit and borrowed money liabilities and receiving therefor cash and exchange and good paper, etc., sufficient to meet the same." No contract appears to have been drawn at the time, but more than a month afterwards an agreement which was evidenced by resolutions by the directors of both banks "was made in the performance of the contract of June, 1889." This contract, in addition to providing for the liabilities which the Union Bank had already assumed and in payment of which certain assets had been transferred, provided that the Union Bank should also assume certain rediscounts, amounting to $31,000.00, which had been omitted in the previous contract, and as security for this additional payment all the remaining assets were put in the hands of a trustee, who was to collect them and after paying certain expenses of liquidation repay the Union

Bank the amounts advanced by it, the resolution providing that the surplus of these assets, now for the first time pledged, should be returned to the State Bank. No such reservation of the surplus had been made in the original agreement. These resolutions also contained the distinct provision that the Union Bank "would not make or assert any claim or liability against or upon the part of said State National Bank or its stockholders beyond the said assigned assets."

It will readily be seen that the first contract provided for an absolute transfer of particular assets in payment of amounts assumed, while the formal resolution carrying into effect this contract added the additional element of the transfer of all remaining assets, with a reservation of overplus and a distinct agreement that there should be no liability beyond the assets. Judge Sanborn, in discussing the contracts, says that he is strongly of the opinion that under the original contract it was not intended there should be a debt, and that this intention is rendered perfectly clear because the parties themselves in interpreting this very contract when they were agreeing upon the details limited the liability to the assets. After quoting the last resolution which expressly exempted both the bank and the shareholders from liability, the opinion concludes, "The express terms of the contracts between the banks forbid the implication that the State Bank agreed to pay to the Union Bank any part of the debts which the latter assumed." (p. 286).

The expressed intention of the contracting parties in the Schofield case was to exempt the bank and its shareholders from liability, while the expressed intention of the parties in the instant case was not to exempt the bank or the shareholders from liability.

The Schofield case was also relied on in the Court be-

low, as holding that the assumption of the bank's debts is not sufficient to create a liability which can be asserted against the shareholders, because, as appellents insisted, the assumption was made after the suspension of the bank.

Again we think counsel have misunderstood the Schofield case. The argument in that case was that the contract between the two banks by which one undertook to assume the liabilities of the other was *ultra vires,* and it was sought to repudiate the contract and recover on the implied promise to repay the amounts advanced in payment of the liabilities. But the Court held that the agreement between the two banks was not *ultra vires,* "there was nothing in the contract beyond the powers of the Union National Bank" and, therefore, there was no foundation for a cause of action for money expended for another's use. It was also held that if the contract was not relied on, before suit could be predicated on an implied promise to repay amounts advanced, it must appear that the money had actually been advanced, whereas it distinctly appeared the Union Bank had not paid the liabilities and had become insolvent, and therefore could not pay them. It was sought to repudiate the contract because this in terms relieved the bank and its shareholders from liability, and to rely entirely on the implied promise to pay. The decision of the Court was that the contract was valid and could not be repudiated, and that before one can bring suit on the theory of money expended for another's use simply, the money must be actually so expended.

### THE FACTS HAVE BEEN ESTABLISHED BY THE MASTER'S REPORT.

Perhaps all that need be said on behalf of the Appellee

is that the law of the case has been settled fully and finally by this Court in

Wallace v. Wyman, *supra.*

which was followed by the Circuit Court of Appeals in its opinion on the first appeal; that the facts have been found by the Master and his report has been approved by the trial court, and its decree has been affirmed on the facts as well as the law by the Circuit Court of Appeals, and therefore there is the strongest presumption in favor of the Master's report, which can be overcome only by clear and convincing evidence of a mistake or error by the Master.

*Girard Life Ins. Co. v. Cooper,* 162 *U. S.*, 529, 40, *L. Ed.*, 1062.

*Camden v. Stuart,* 144 *U. S.*, 104; 36 *L. Ed.*, 363.

*Metsker v. Bonebrake,* 108 *U. S.*, 66; 27 *L. Ed.*, 654,

2 *Foster's Fed. Prac, pp.* 1232-3.

No such error has been shown.

Indeed the report of the Master and his conclusions thereon are so well supported, both by authority and the evidence in the case, and the two opinions of the Circuit Court of Appeals are so clear, cogent and convincing that it seems quite superfluous to attempt to add anything thereto.

However, a brief resume of the more important evidence and a reference to a few of the authorities may not be amiss.

## THE SURROUNDING CIRCUMSTANCES.

The circumstances surrounding the making of a contract may always be inquired into as an aid to its construction.

It appears from the minutes of the Commercial Bank that in June, 1914, (Tr. pp. 1054-1058), the bank was given a searching examination by the National Bank Examiner, as a result of which it was subjected to the severest criticism by the Comptroller. (Tr. p. 1059). The bank was practically taken out of the control of its officers and placed under the immediate direction of the Finance Committee. (Tr. pp. 736, 157). It was told in so many words that the acts of its officers were directly in violation of the National Bank Act and sufficient to subject them to criminal prosecution. (Tr. p. 1060).

The bank was put on probation with direction to reduce immediately several lines of credit largely in excess of the legal limit, and its directors were required to pledge themselves to such reduction and to a complete reformation in the conduct of its affairs.

As late as July 14th the Finance Committee reported that it had not been able to make any reduction in the three principal lines of credit, Parker, Jelks and Mallary, who together owed the bank more than its combined capital and surplus. The condition as disclosed by this report, over the signatures of Leon S. Dure and W. T. Anderson, was exceedingly grave. (Tr. p. 1064). The bank was manifestly cramped for funds; relief had to be obtained from some source. Rumors affecting the solvency of the bank became current. (Testimony of L. P. Hillyer, Tr. p. 880; E. Y. Mallary, Tr. p. 711; L. S. Dure, Tr. p. 737).

The situation is well described in the statement of W. T. Anderson made to the meeting of shareholders on Au-

gust 12, 1914 (Tr. p. 529-531). After referring to this examination of the bank made by Examiner Higgins, by whose request he and Mr. Dure took active charge of the bank, Mr. Anderson stated:

> "We found the bank had overloaned and we were unable to get in enough money on these loans to carry on business. Bad matters got worse. Exchanges were held up on Georgia banks and remittances not gotten out promptly. These requests for remittances came faster and faster, and finally withdrawals by the banks. The drain came stronger than we could take care of. Rumors got afloat.
>
> "We found the American National Bank kindly disposed and we got the officers to go down and talk to American National officials and arrange to have them taken over. We thought that if we could do anything to save a run and court costs it would save money for depositors and stockholders and protect the business interests of the city."

The admirable summary of the Master gives a vivid picture of the Commercial's situation and of the desperate straits in which it found itself. (Tr. pp. 160-165).

About the first of July the American had discounted for Lewis, Cashier of the Commercial, a note for $20,000.00, (Tr. p. 904). A little later, at the request of President Mallary, the American loaned to Director Jelks, first $25,000.00, and afterwards through the Continental Trust Co., $17,000.00, additional (Tr. pp 904-5), to enable him to reduce his line, the bank needing ready money. It also made some large direct loans to the bank, taking its bills receivable as collateral. (Tr. p. 701). On Thursday night before August 1st, Mallary, President, and Cobb, Vice-President, went to President Taylor's house and requested him to lend the bank from $50,000.00 to $100,000.00. (Tr. p.905).

The obtaining of this additional loan was the object of the visit. In view of the previous loans and of the rumors affecting the bank, Taylor suggested that the matter be taken up with the other banks composing the Clearing House. Mallary insisted that he didn't want the other banks to know about it, but wanted the American to handle the whole matter. Taylor was unwilling to make the loan until he had made some investigation of the condition of the Commercial. After it was agreed that this investigation would be made by the officers of the American, Mallary then suggested that in the fall he would like to discuss with Taylor a consolidation of the two banks, as he wished to retire from the banking business. And this is the only conversation which Taylor recalls at which a proposed consolidation was mentioned.

After going further into the condition of the bank, it became evident a loan of $50,000.00 or $100,000.00 was altogether inadequate, and it was then that the plan of furnishing additional assistance was worked out. (Tr. pp. 905-906). Again the Master's findings are most illuminating. (Tr. pp. 165-168).

### THE DIRECTORS' RESOLUTIONS OF AUGUST 1ST.

On Saturday, August 1st, the Boards of Directors of the two banks held meetings and passed resolutions. These resolutions, as was said by Judge Evans in his opinion on the motions to dismiss, are "the determining factors, for under them the transfer of the assets was effected."

After spending all night in examining the receivables of the Commercial and endeavoring to ascertain its immediate necessities, President Taylor called a meeting of the directors of the American and laid the matter before them. The Board were told by Mr. Taylor that in his opinion the as-

sets of the Commercial were not sufficient to pay its debts. The bank's counsel was consulted and advised that the shareholders would be liable for any deficit. (Tr. pp. 909-910). After consideration, the directors authorized the bank's officers to assist the Commercial if on further investigation they deemed it safe to do so.

The resolution adopted by the directors of the American (Tr. p. 61), containing the proposition which the resolution of the Commercial accepted, dealt only with the immediate or present transaction. It makes no reference to a prospective consolidation of the two banks or to the liquidation of the Commercial. Its purpose is to care for the then existing emergency. It provides that "this association assume the payment of the deposits," etc. of the Commercial and "agree to pay the same when presented,"

> "upon condition that said association transfer to this association, as cash or as collateral for its notes, cash * * * and other assets sufficient in amount and in value, in the estimation of the officers of this association, *to fully protect and secure this association for any and all amounts so assumed, or shall otherwise satisfactorily secure this association* for all amounts paid or assumed." (*Italics ours*).

The resolution further provided that the American would take over the business of the Commercial and would account to its shareholders for any overplus which might remain after paying the indebtedness of the Commercial and the expense of realizing on the assets transferred.

W. T. Anderson, of the Commercial's Finance Committee, waited outside to hear the decision of the American's directors. His fervent "Thank God," when told the American had decided to liquidate the bank, feelingly expressed

the relief experienced by the Commercial's official family. (Tr. p. 915).

Thereupon a meeting of the directors of the Commercial was called to consider the proposition contained in the resolution of the American.

The resolution adopted by the directors of the Commercial (Tr. p. 60) is really two resolutions. In the first it is recited that "in the opinion of the Board of Directors it is expedient for this association to go into voluntary liquidation," and the officers were directed "to proceed to call a meeting of stockholders to consider this question and the consolidation with the American National Bank by the sale of its assets to said bank."

This clearly has reference to something to be done in the future . The resolution recognizes that action by the shareholders is required before liquidation can be begun. The meeting was to be called in order that the shareholders might consider the liquidation which the directors deemed expedient, and might consider, also, a consolidation with the American by the sale of its assets to that bank. This indicates—in fact, demonstrates— that no sale was, or was to be made by the directors unless so authorized by the shareholders.

The second resolution was an acceptance of the American's proposition, and was intended to make provision for the deposits and other liabilities of the Commercial,*pending action by the shareholders.* The Commercial being without funds to meet expected withdrawals, the directors resolved "that the exigencies of the situation are such that in contemplation of the liquidation of this association" (to he had in the future), a temporary arrangement to care for liabilities must be made. The directors, therefore, author-

ized the officers of the bank to transfer to the American "as cash, or as collateral for its notes," all the assets of the association, and the resolution proceeds:

> "Which said assets are hereby *transferred, assigned and delivered* * * * *in order to fully protect and secure said bank for all moneys advanced or to be advanced* by said bank under the assumption and payment of its deposits, bills payable and other liabilities of this association." (*Italics ours*).

It was further provided that the American should take over the business of the Commercial and account to the shareholders for any overplus which might remain after paying the indebtedness of the Commercial in full and the expense of realizing on the assets transferred.

The language of this second resolution shows beyond peradventure that the assets were transferred as security only. The language is "to fully protect and secure." The money to be paid out by the American is spoken of as "advances" or "amounts advanced and to be advanced." At that time the American had actually loaned, on the security of the bank building, $25,000, and on collateral, $50,000. This was the "amount advanced." It was to make other "advances" sufficient to pay all liabilities.

An "advance" and a "loan" are synonymous terms.

> "To advance is to supply beforehand, to loan before the work is done or the goods made. This is the popular understanding of the language as well as the accurate definition."

*Laflin & Rand Powder Co. v. Burkhardt*, 97 *U. S.* 110, 24 L. Ed. 974.

> "The word 'payment' indicates a finality. The word 'advancement' indicates the return of the money advanced in some way."

*Henderson v. Ries*, 108 *Fed.* 709, (4 *C. C. A.*)

"In the common understanding, an advance or loan of money on stocks, bonds, bullion, bills of exchange, or promissory notes, is an advance or loan where these species of property are pledged as collaterals or are hypothecated to secure the return of the advance or the payment of the sum lent."

*Selden v. Equitable Trust Co.*, 94 *U. S.* 419, 24 *L. Ed.* 249.

Quoting Bouvier's definition of advances, the Supreme Court of Georgia says:

"This gives the strict legal sense of advances, and according to this, advances are loans and nothing more."

*Nolan's Executors v. Bolton*, 25 *Ga.*, 352, 356.

The definition of "advance", according to Bouvier, is "to supply beforehand; to furnish something before an equivalent is received; to loan. Rogers v. Bank, 108 N. C., 574, 13 S. E. 245."

*Rawle's Bouvier's Law Dictionary*, p. 150.

This resolution transferred the assets to secure an "advance," the arrangement being made with the expectation that thereafter the shareholders would authorize the liquidation of the bank and would provide for a sale of the assets thereby pledged to the American, and by such sale effect a consolidation (in the popular sense) of the two institutions.

The only other business transacted by the directors of the Commercial at this meeting was to provide for calling a meeting of the shareholders to be held on August 12th, the minutes giving the form of the notice to be sent to the shareholders, in which it was stated:

"That the business proposed to be transacted at said meeting is the consolidation of this bank with the

American National Bank of Macon by the sale of its assets to said American National Bank and the assumption of its liabilities in taking over its business by said bank, including the liquidation of said bank under Sections 5220, 5223 of the Revised Statutes." (Tr. p. 523).

The shareholders were thus notified that it was *for them to decide,* at the meeting of which notice was given, whether or not a sale of the assets to the American should be authorized and whether or not the Commercial should be placed in liquidation.

The resolutions of both banks left the actual contract to be made to be determined by the officers, the American's resolution leaving it discretionary with the officers as to whether any contract should be entered into.

There is not a suggestion in either resolution that an immediate sale of assets was to be made. It is true the officers were authorized to transfer assets "as cash." The Commercial had on hand cash, checks and other cash items aggregating $30,668.78. (Tr. p. 160). It was not expected that these should be hypothecated as collateral, but rather that the American should give immediate credit for them. These were to be transferred "as cash," but it was contemplated that the other assets should be held simply as security—certainly until affirmative action by the shareholders of the Commercial should authorize its liquidation and the sale of these assets.

Remembering the situation in which the Commercial was then placed, and having in mind, also, the provisions of the National Bank Act with regard to the liquidation of a national bank, the purpose of the two resolutions is perfectly clear and entirely consistent, not only with themselves but with what was done pursuant to their authority.

## THE CONTRACT OF AUGUST 11TH

On August 11th a formal written contract was signed by the officers of the two banks. (Exhibit "A" attached to original bill, Tr. p. 20). This contract, which purports to be "Articles of Agreement for the Liquidation of the Commercial National Bank by the American National Bank," recites the resolutions of the boards of directors at the meetings held on August 1st. It hay be significant that all reference to a transfer of the assets "as cash" is omitted in the recital of both resolutions. The officers of the two banks, having been given authority to carry out the purpose of the resolutions and having been given the option of transferring, either "as cash or as security," the contract recites the resolutions as authorizing a transfer "as security," for that was the method actually adopted, and leaves out any reference to a transfer thereof "as cash."

Like the resolutions of the Commercial's directors, the contract relates to two subjects matter:

First: The transfer of the Commercial's assets under the authority of the directors, already accomplished: and

Second: The proposed liquidation of the Commercial and the handling of its affairs, if and when such liquidation should be authorized by its shareholders.

So far as the transfer of the assets is concerned, the contract is a memorial of a completed transaction. The assets were not transferred by the contract, but as appears from the contract itself, the transfer was accomplished by the resolutions, or under the authority of the resolutions by the officers. At the time the contract was signed they had already been pledged, and this fact is distinctly recognized in the contract.

Having recited the transfer, the contract in the first para-

graph confirms the transfer "at the close of business on August 1, 1914."

Paragraph two is the agreement on the part of the Commercial that, in contemplation of its liquidation to be accomplished under the appropriate sections of the Revised Statutes, a meeting would be called, and at such meeting resolutions would be adopted, liquidating the bank and consolidating it with the American by the purchase of the assets of the Commercial, but without providing for the issuance of stock to its shareholders.

This has reference to something to be done in the future at the meeting to be called. It shows clearly that no consolidation had been had up to that time and it was recognized that the Commercial was not then in liquidation. It also shows that the Commercial retained an interest in its assets which had been pledged to the American, because it provides that, in the event the shareholders authorize it, these assets are to be sold to the American. If, as is contended by the Appellants, a sale had already been had, how could the Commercial contract that its shareholders would pass appropriate resolutions for the sale in order to effect a consolidation.

The third paragraph, also, provides for resolutions to be passed at this proposed meeting of shareholders, under which the American would be appointed liquidating agent, which liquidation should be conducted under the supervision of the Commercial's board of directors.

The fourth paragraph makes it clear that no consolidation in the legal sense was contemplated, for it provides that until the final liquidation and final settlement with its shareholders, the Commercial should maintain its corporate existence. It provides for directors and officers, who should

perform services with reference to that liquidation and such as might be necessary to effectuate the transfer of the legal title to its assets.

By the fifth paragraph the American assumes the liabilities of the Commercial, but it is to be noted that it carefully confines its promise to pay to the liabilities shown by an exhibit attached to the contract. Up to that time it had not assumed the circulating notes of the Commercial, but the contract provided that it would procure the passage of an appropriate resolution for that purpose *when the Commercial should be placed in liquidation.*

By the sixth paragraph the American agrees that it will accept the appointment of liquidation agent for the Commercial (which appointment of course could not be made until the shareholders of the Commercial had passed the necessary resolution placing it in liquidation), and that it would collect and reduce to cash all assets of the Commercial,

"*All of said assets to be held as security by said American National Bank for all advances made by it in the payment of the depositors and other liabilities* of said Commercial National Bank and the actual expenses incurred by said American National Bank in realizing on said assets, and that, after deducting from the proceeds of said assets the actual expenses incurred by said American National Bank in liquidating said association and acting as liquidating agent and in collecting said assets and realizing upon the same, *it will apply said proceeds*:

"First: *In repaying to itself all amounts advanced by it hereunder, with interest thereon at the rate of seven per cent. per annum.*

"Next: In discharging the liabilities of said Commer-

cial National Bank which shall not have been paid by advances made by said American National Bank.

"And that when all of said liabilities shall have been fully discharged, *it will account to said Commercial National Bank and from time to time pay over to said shareholders, pro rata, the surplus remaining in its hands from the proceeds of said assets,* said American National Bank to act as such liquidating agent without compensation for its own services." (*Italics ours*).

Here is a clear and distinct recognition by both contracting parties of the capacity in which the American held the Commercial's assets. The American agrees to act as the agent of the Commercial in liquidating these assets. It agrees to hold them as security for amounts which it has advanced. It agrees to apply the amounts realized from these assets to repaying itself the amounts which it has advanced, plus interest thereon, and to account for the overplus. Is it conceivable that it would have made any such agreement if, as is contended by Appellants, it purchased these assests under the resolutions of August 1st? Can we conceive of a purchaser agreeing to act as the seller's agent in realizing on the property purchased and undertaking to dispose of that property and use its proceeds to repay himself? If he bought what is there to repay? Does a purchaser collect interest on the purchase money? Does a seller pay interest? Does a purchaser account to a seller for an overplus in excess of the purchase price?

As was said by the Court of Appeals in its first opinion speaking through Walker, C. J.:

> "this plainly indicates that the parties intended that performance by the American Bank of the obligations it incurred was to have the effect of creating an interest-bearing debt owing to it, and that the trans-

ferred assets were received and held by it, not as property bought by it, but as a pledge or security for the payment of that debt." (Tr p. 1164).

And, speaking through Bryan, C. J., in its second opinion:

"The provision for repayment of advances with accrued interest to the American Bank is the most positive kind of evidence of a loan." (Tr. p. 1174).

The sixth paragraph of the contract further provides that in the event the liquidation of the Commercial should be interfered with or discontinued, then the American bank "shall and does hold all of the assets of said Commercial National Bank as security for the advances which may have been made by it up to the time such liquidation shall be discontinued."

Here again is a distinct recognition that the assets belong to the Commercial, and that the only interest which the American has in them is to secure itself for loans or advances which it has made. The language is wholly inconsistent with the theory of Appellants that the American was the purchaser of the assets. Its attitude would have been little short of ridiculous if it had bought and was then the owner of the Commercial's assets.

"The contention by appellants (strongly urged in the Circuit Court of Appeals and still insisted on here) that the assets of the Commercial Bank were only intended to be pledged in the event the shareholders failed to ratify the resolutions and contract adopted and entered into by the directors on behalf of the two banks, or in the event the transaction should be attacked by suits, is not a reasonable or satisfactory one, in view of the general character of the provision which contains no such limitation,"

says Judge Bryan, (Tr. p. 1175).

The sixth paragraph concludes with this significant provision:

> "And it being further distinctly agreed and understood that neither the resolutions of said Boards of Directors of said associations, nor this contract, shall *relieve the shareholders of the Commercial National Bank from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholder's liability for any deficit* which may remain after exhausting the other assets of said association in the payment of its liabilities." (*Italics ours*).

It should be remembered that at the time the contract was signed the American had already, under the resolution of August 1st, assumed the liabilities of the Commercial. It was then advancing money in enormous amounts to enable the Commercial to pay off its depositors.

In view of this assumption the American was to be the Commercial's only creditor. The contract was between the two banks. No one else was interested in it. It was not contemplated that the Commercial should have any other creditor. To have inserted this clause in a contract of bargain and sale would have been most unusual, altogether unnecessary, and wholly out of place. It would have been entirely meaningless. But, as we have already shown, the American took the assets in pledge as security for its advances. It was therefore perfectly consistent that it should desire and should insist that in the event the assets were not sufficient to reimburse it, the liability of the shareholders should be preserved as an additional security for the large indebtedness which it had incurred.

This was an asset worth, nominally at least, $300,000.00. It was of greater value than any single asset the Com-

mercial had. The American had assumed liabilities of more than a million dollars. When the formal contract between the two banks was prepared, this paragraph was deliberately inserted, showing beyond peradventure that the contracting parties had this valuable asset in mind and that the American intended to resort to it if necessary.

We must perforce agree with Judge Walker that:

> "It hardly is conceivable that this provision would have been inserted in the absence of an intention that the making by the American Bank of the disbursements it obligated itself to make would result in creating a liability of the Commercial Bank for which the latter's shareholders would be individually responsible." (Tr p. 1169.)

The contract construed as we contend is consistent throughout. It is not consistent on any other possible theory.

### THE SHAREHOLDERS MEETING OF AUGUST 12TH.

Pursuant to the call of the board of directors, the shareholders of the Commercial met on August 12th. At this meeting, at which 2,616 shares out of 3,000 were represented, a resolution was adopted ratifying the action of the board of directors as contained in the resolution passed on August 1st. This resolution, it will be remembered, in terms transferred the assets as security for advances made and to be made. (Tr. p. 528).

A resolution was also passed ratifying in full the contract between the two banks dated August 11th. (Tr. p. 528). This was not a mere formal or perfunctory act. The contract, as shown by the minutes, was read in full by Mr. Lane, the Counsel of the bank, and that paragraph with reference to the shareholders' liability was objected to

by more than one shareholder. (See testimony of Mallary, Tr. p. 710; Dure. Tr. p. 732; Benton, Tr. p. 807).

Mr. Lane explained that he had also objected to the insertion of the paragraph in the contract, but that the President of the American and its counsel had insisted that the paragraph be included. Mr. Lane gave it as his opinion that if the shareholders were liable under the law, the omission of the paragraph would not relieve them from liability, and that its insertion in the contract would not make them liable unless they were liable under the statute. (Master's Report, Tr. p. 224).

The contract was then ratified unanimously. (Tr. p. 532).

In light of this discussion, the shareholders knew that it was the purpose of the American to enforce the liability of the Commercial's shareholders "in the event it may be necessary to have recourse upon such shareholders' liability for any deficit which may remain after exhausting the other assets of said association in the payment of its liabilities." (Quoting from the contract).

They also knew that the American claimed to hold the assets only as security, and that under the contract it had obligated itself to act as liquidating agent in collecting the assets and had undertaken to apply the proceeds of such assets:

> "First: In repaying itself all amounts advanced by it hereunder, with interest thereon at the rate of seven per cent. per annum. * * * * *
>
> "And when all of said liabilities shall have been discharged, it will account to the shareholders of the Commercial Bank and from time to time pay over to said shareholders, pro rata, the surplus remaining in its hands."

Being advised that this was the construction placed upon the transaction by the American, and of the American's purpose to hold the shareholders liable for any deficit, after full discussion the shareholders unanimously ratified the contract.

The statement made at the meeting by W. T. Anderson is likewise illuminating. The minutes purport to give a literal quotation of a part of Mr. Anderson's remarks.

In this statement Mr. Anderson says:

> "The assets over the liabilities figured, according to my recollection, about $443,000·00, and that was the margin on which they took it, *backed by the additional liability of the stockholders.*" (Tr. p. 531). (*Italics ours.*)

Having ratified the transfer of the assets "as security," accomplished under the resolution of the directors, and having ratified the contract signed by the President and Cashier, after the matter had been fully explained and the construction placed upon it by the American had been given, the shareholders unanimously passed a resolution putting the bank in voluntary liquidation under § 5220, 5221, Revised Statutes, and appointed the American liquidating agent The resolution provided that the liquidation should be conducted "according to law and under the supervision of the Board of Directors;" that the liquidating agent should give bond, should make regular reports to the Comptroller of the Currency and annual reports to the shareholders. It provided for meetings of the shareholders and for a change in the liquidating agent if the shareholders should deem such change desirable. (Tr. p. 732-3).

This resolution is altogether inconsistent with the thought that a sale of the assets had previously been made.

If the assets had already been sold, why the necessity of a liquidating agent? Why require such agent to give bond or to make reports? If the assets belonged to the American would it be reasonable that it should undertake to administer them under the supervision of the directors of the Commercial?

The shareholders had been called together to consider the liquidation of the bank and its consolidation with the American by a sale of its assets to that bank. The shareholders passed resolutions for liquidation, but took no action whatever with regard to a sale of assets or for consolidating in any way with the American. It left the assets precisely where they had been before the meeting was held, pledged as security for advances made by the American. The only change made was the appointment of the American as its agent in liquidating these assets, with the written and signed agreement that the agent would apply the proceeds realized, "first, to repaying itself for its advances with interest thereon."

The only other business transacted by the shareholders at this meeting was the appointment of the "special stockholders' committee, representing the stockholders, whose duty it shall be to serve with the Board of Directors and who shall be consulted before any final action is taken by the Board of Directors on all matters relating to said liquidation by said American National Bank." (Tr. p. 531).

### SHAREHOLDERS MEETING OF SEPTEMBER 30TH.

The Comptroller having ruled that the meeting of August 12th was illegal because thirty days notice thereof had not been given, the board of directors of the Commercial called another meeting of the shareholders, which convened

on September 30, 1914, there being represented at this meeting 2,684 shares out of 3,000. (Tr. p. 541).

Two months had elapsed since to meet the "exigences of the situation" the directors had transferred the assets to the American. In the meantime, the depositors of the Commercial had been in large part paid off. The American had made advances amounting to more than half million dollars in excess of amounts which it had received from the Commercial. The flurry caused by the Commercial's situation had largely subsided.

Mr. Lane, the counsel of the bank, at this meeting offered a formal written resolution (Tr. p. 542), which recited:

> "Whereas the Board of Directors of this association by resolution adopted on August 1, 1914, *transferred and assigned to the American National Bank all the assets of this association as security for the liabilities of this association, which were assumed* by the said American National Bank, said resolution being passed in contemplation of the voluntary liquidation of this association under the provisions of §§ 5220, 5221 of the United States Revised Statutes." (*Italics ours*).

The resolution then ratified the action of the directors, the contract of August 11th, and the resolution adopted by the shareholders at their meeting on August 12th placing the bank in voluntary liquidation. This resolution was adopted by vote of more than two-thirds of all the shareholders.

Can there be any doubt that the shareholders understood the capacity in which the American held the assets? How can these shareholders, in the face of this resolution,

contend that there was a sale of the assets accomplished by the resolution of the directors on August 1st? If they had thought it was a sale—if there was any basis whatever for this contention, would the accomplished lawyer, counsel for the association, a director and a considerable shareholder, have offered a resolution in which he recited that the assets had been transferred "as security?"

It appears from the minutes, and is made perfectly clear from the testimony of Mr. Benton (Tr. p. 810), that this was not a harmonious meeting. Severe criticisms of the management of the bank had been and were being indulged in. Jelks, who owed the bank approximately $100,000.00, had been forced into bankruptcy, and by this time it was apparent that his paper would be almost a total loss. Other assets, supposed to be good, had rapidly dwindled. From the testimony of Mr. Hillyer (Tr. p. 887), it appears that by this time it was well known that there would be a very material shrinkage of assets and the American would probably sustain a considerable loss.

Yet the counsel of the bank, who participated in the preparation of the resolution of the directors, and as a director voted for it, who had assisted in the preparation of the contract, offered to the shareholders a resolution reciting that the assets had been transferred "as security," and more than two-thirds of the shareholders voted for the adoption of the resolution.

The shareholders at this meeting adopted again the resolution for voluntary liquidation and for the appointment of the American as liquidating agent, the resolution being in the same form as that offered at the previous meeting, and reappointed the committee of five to assist in liqui-

dating the assets. (Tr. pp. 544, 546). This was the only business transacted.

Again, it is to be noted that no action was taken looking to a sale of the assets or to a consolidation with the American. In the minutes of neither meeting is there any reference to §5223 of the Revised Statutes, which alone referred to and possibly authorized a so-called consolidation. Again we remark that the assets were left precisely as they had been under the resolution of the directors, pledged as security for advances made by the American.

The American was now for the first time legally liquidating agent. Its contract as such agent authorized it to apply the proceeds of the assets, when reduced to cash, to repaying itself for amounts advanced with interest thereon.

### HOW THE TRANSACTION WAS HANDLED.

On Monday morning August 3rd, the Commercial began business in a portion of the banking room of the American which had been set apart for its use. It brought to its new location all its officers and clerks. These officers were in charge of its books, papers, records, cash, and other assets. Cages were assigned to the paying, receiving, note and collection tellers. The bookkeepers were given desks, and the records of the bank continued to be kept by its own employees in the same way as had been done prior to the change of location. (Master's Report, Tr. pp. 176-178).

None of the assets of the Commercial were taken into the American's assets or entered on the American's books, nor were the accounts of the depositors transferred to the ledgers of the American. The Commercial dealt with its customers precisely as it had done prior to August 1st, though it encouraged its depositors to withdraw their bal-

ances and it discouraged them from making additional deposits. (Master's Report, Tr. pp. 178-9).

Comparatively few loans were made, and most of these grew out of the settlement of some past transaction. These amounted according to the Master to $93,434.71. (Tr. p. 181). But the Commercial paid off its depositors, (Tr. p. 179); the Commercial collected notes in its favor, (Tr. p. 182); the Commercial sold its tangible assets, (Tr. p. 205); the Commercial received deposits for a considerable period and amounting in the aggregate to a considerable sum. The Master finds more than $20,000.00 during the first week. (Tr. p. 180). The Commercial, for a time at least, cleared its own checks through the Clearing House. (Tr. p. 188). The Commercial dealt with its various correspondent banks and itself closed the accounts, making remittances where it owed money, and itself checking out balances where it had sums to its credit. (Tr. pp. 186, 189). The Commerical rented its own building and collected the rents. (Tr. p. 565). The Commercial paid its own expenses and the salaries of its own officers and employees. (Tr. p. 186).

In short, the Commercial continued in all respects as a separate, independent institution. The handling of its affairs was largely under the direction of E. N. Lewis, its Cashier, and of the members of the shareholders' committee, assisted by the officers of the American, its liquidating agent. (Tr. p. 191).

On July 31st the American had loaned the Commercial $25,000.00. This sum was charged to the Commercial on the bank ledger of the American, the amount being entered on the same book and in precisely the same way that the American kept the accounts of other banks to which it loaned money and from which it received deposits. (Tr. p.

194). This account was continued after August 3rd and was the only account which the American ever had with the Commercial.

Where the American cashed checks on the Commercial for its customers, these checks were presented to the Commercial and an officer of that bank gave the American a check to cover these amounts, which check in regular course was charged to the Commercial's account. When the Commercial made collections from any source it deposited the amounts collected with the American in the regular way, using the same deposit tickets that other customers used and being given credit for the deposits on the amount just as any other bank would have been credited with similar deposits. (Tr. pp. 189, 194-195).

The death of Mr. Lewis, the Cashier, and of Mr. Cobb, the active Vice-President, makes it impossible to prove how the arrangement relative to the keeping of the account was agreed on save by the officers of the American, but it appears that this method was put into effect by agreement at the time the Commercial began business in the banking house of the American, and this method begun at that time was continued until the liquidation of the Commercial was practically completed; the only account which the American had with the Commercial being the regular deposit and checking account, none of the assets of the Commercial, or its liabilities, appearing on the American's books. (Tr. pp. 178, 194-196, 655).

The method of keeping the books was explained in detail by Mr. Souder, who was at the time Assistant Cashier of the Commercial, Mr. DeBorde, one of its tellers, Mr. Scott, the Cashier of the American, and Mr. Creed Taylor, the expert accountant, who himself at different periods made

three separate audits of the Commercial's affairs. (Souder Tr. pp. 594-623; DeBorde, pp. 779-794: Scott, pp. 648-656; Taylor, p. 637).

The books of the Commercial, its cancelled checks, its expense vouchers, its drafts on corresponding banks, were all introduced in evidence to show how its accounts were kept and the books of the American showing the account and the amount of the overdraft were also introduced. The Master's Report sets out fully and in detail how the business was conducted and the account handled. (Tr. pp. 178-196).

Had the American been the purchaser of the Commercial's assets, these assets would have been entered on its books; the notes receivable, under "Loans and Discounts," on its general ledger; the real estate, under "Real Estate Account;" its stocks and bonds, under that head.

If the American had been a purchaser, it would have been entitled to the interest collected on the different bills receivable of the Commercial; and where less than the full amount of a note was collected, the loss would have been the loss of the American and not of the Commercial.

If the American had purchased the assets, it would have collected the rents on the Commercial's building and other real estate and it would have paid the expense of the upkeep of the property. (See testimony of L. P. Hillyer, Tr. pp. 184-186).

From the correspondence of the Commercial, taken from its files, it appears that these assets were always stated and spoken of as the property of the bank. There are numerous letters from the Cashier, calling on debtors to pay or call and arrange their notes held by the bank. Correspondent banks were written to with regard to collateral which they held. In several instances, other collateral was

substituted for notes falling due. In some instances, the Commercial renewed its own notes and secured the renewals. (Tr. pp. 190, 946, 947).

None of these things are consistent with a sale by the Commercial of its assets. In none of this correspondence is the transaction with the American spoken of as a sale or as a consolidation. The Cashier uniformly speaks of the Commercial as being in liquidation, and on account of this fact calls on its debtors to arrange their past due notes.

A great many of the debtors of the Commercial got into financial difficulties, and the Commercial itself, and in its own name, filed proofs in bankruptcy cases amounting in the aggregate to some $300,000.00. It filed a number of suits for the collection of paper due to it, in its own name. That is was always regarded as a separate entity is clearly shown by the fact that at one time or another nearly all of the members of its Board of Directors were engaged in litigation with it, generally as plaintiffs. Surely, if the bank had been consolidated with the American, or if it had sold its assets outright and was nothing but a "shell or legal phantom," these directors and others would not have undertaken to litigate with it. (Tr. p. 204).

Again, the Commercial at various times running through a period of some two years made conveyances of real estate, the consideration amounting to many thousands of dollars. Some of these sales were to the American, others to various other parties. It took conveyances, of real estate both absolute and as security. Some of this property it afterwards sold to the American at less than it paid for it. (Note the transaction with W. E. Small, by which the Commercial acquired property for $12,500.00 and sold it to the American for $10,000.00. Tr. p. 205). Surely if the

American purchased the Commercial's assets it would not thereafter have taken deeds from the Commercial for the property which it already owned, nor would it have been reasonable to expect that conveyances of property would have been made to the Commercial or that the Commercial would sell property to other persons.

That business was being conducted in this way and was expected to be so conducted, is clear from the testimony of Leon S. Dure and W. T. Anderson, members of the Finance Committee before the contract with the American and the active members of the liquidating or shareholders' Committee. (Tr. pp. 742, 748, 767, 768). It appears from their testimony that they themselves negotiated a great many of the settlements with debtors of the Commercial, and it is apparent that they were thoroughly familiar with everything which was done.

While not so active as they, John J. McKay was also a member of this committee and familiar with the method adopted. L. O. Benton and John F. Lewis, two veteran and experienced bankers, the other members of the Committee, were also familiar with this method. It appears that they purposely refused to consent to a good many things which were being done by the Committee.

Is it conceivable that this committee and the officers of the Commercial would have so acted with reference to the assets of the bank if there had been an absolute sale of these assets?

Anderson and Dure testified that within a few months after August 1st it was evident that there would be no surplus for shareholders, and yet they continued to act as members of the committee, and never once, so far os the evidence discloses, took the position that the assets belonged to the American. (Tr. pp. 88, 767, 840).

## MINUTES OF THE SHAREHOLDERS COMMITTEE.

Fortunately we are not left to the recollection of members of the shareholders' committee as to the plan adopted for liquidating the assets of the Commercial, nor as to their interpretation of the contract between the two banks. The committee kept regular minutes of its meetings. These were identified and are admitted to be correct, though Messrs. Anderson, Dure and McKay are all of the opinion that the committee held a number of other meetings of which no minutes seem to have been kept. If their recollection is correct, this only serves to show that the committe was even more active and participated to an even greater extent in the liquidation than the minutes indicate.

At the first meeting of the committee, held immediately after its election on August 12th, when no one was present save the members of the committee, action was taken which is strongly corroborative of appellee's interpretation of the contract and entirely irreconcilable with appellants' contention. A few extracts may be of interest:

> "Mr. McKay moved that the $300,000.00 in bonds belonging to the bank be sold. Carried."
>
> "Mr. Benton moved that the Chairman request financial statements from the Mallary Mill Supply Co. Mallary Bros. & Co., Mallary & Taylor Iron Works, Mallary Machinery Co., Taylor Boiler Works, and also from F. L. Mallary, W. H. Roper, C. F. Smith, and the business of J. H. Virgin. Carried."
>
> "It was agreed that the Chairman take in charge the matter of renting the banking office and the offices in the bank building." (Tr. p. 564).

Appellants contend that the assets of the Commercial were sold to the American on August 1st, yet immediately

after ratifying the contract the shareholders' committee determined to sell $300,000.00 of bonds. The committee also, of its own motion, takes in charge the bank building and undertakes to rent it—an unusual liberty to take with another corporation's property.

Without undertaking to call attention to the minutes in detail, it may suffice to point out in a general way that this committee acted on a large number of matters and gave direction to them in a way which indicates beyond question that they regarded the claims and property as belonging to the Commercial. They granted extensions, called for security, directed sales, authorized compromises, placed a large amount of paper in the hands of attorneys for collection, required the transfer to the bank of various securities which had been held by its officers and of various stocks held by the bank as collateral. They authorized a number of most important contracts involving large values, notably the contracts with the Capitol Savings Bank, the Central Trust Company, the various Parker enterprises, and a number of others. (Minutes of Committee, Tr. pp. 564-592; Master's Report, Tr. p. 197, 293).

On November 2, 1915, they placed the bank building in the hands of real estate agents to secure bids, thus indicating that for more than a year they had continued to control the building and still regarded it as an asset of the bank. (Tr. p. 591). Still later they adopted a resolution requesting the American to offer the bank building for sale at public outcry at an upset price of $40,000.00. (Tr. p. 966, 968). The property having been withdrawn from sale because the upset price was not offered, the Board of Directors passed a resolution selling the building to the American for $40,000.00. (Tr. p. 205).

On April 6, 1915, the minutes contained this significant statement:

> "A full list of all the notes in the hands of attorneys for collection and those in the hands of the bank was submitted and carefully gone over. The *desirability of selling the American National Bank all of the unpaid notes at an agreed valuation was discussed at some length,* and it was decided that the committee from the Commercial National Bank would consider the matter of placing a value on the separate items with a view of recommending to the stockholders that this plan be adopted." (Tr. pp. 202, 581). (*Italics ours*).

And at the same meeting:

> "A motion was made and adopted that, in view of the Commercial National Bank *being the owner and holder* as collateral of large amounts of stocks and bonds of the Eagle River Mining Company, that this committee request their permission to have an audit and statement of the books and affairs of the said Eagle River Mining Company made." (Tr. p. 589). (*Italics ours*).

The sale of uncollected assets referred to in these minutes appears to have been a frequent matter of discussion during the years 1915 and 1916, as appears from the testimony of Mr. Dure (Tr. pp. 751-2) and of Mr. Anderson, (Tr. p. 767).

Is it conceivable that experienced and capable business men such as composed the shareholders' committee would have discussed the sale of assets which had already been sold eight months before? It will not do to say all that was meant was to place a valuation on these assets. This is flatly to contradict the minutes. Besides, it must be borne in mind that under the testimony of Anderson and of

Dure (Tr. pp. 767, 840), it was known by this time that there was no possibility of any surplus after paying the advances of the American, and therefore the shareholders could have no possible interest in these assets, and it would have made no sort of difference to them what valuation the American placed on the assets unless they were to be held liable for the deficit.

## CORRESPONDENCE WITH AND REPORTS TO THE COMPTROLLER.

Both of these banks were National Banking Associations, required by law to make reports to the Comptroller of the Currency and subject to frequent examination by agents of his office. No bank could be liquidated save with his approval and under his general direction. Therefore what these banks said to the Comptroller must have been true; they could not afford to make any mistatement. The official communications to and from the Comptroller's office, made contemporaneously with the transaction, are of the greatest value, therefore, in determining what the contract was and how it was executed and construed by the parties.

Again, we call attention to the fact that a national bank can only be placed in voluntary liquidation by action of its shareholders, whether it is proposed to consolidate with another association or simply to retire from business.

The letters to and from the Comptroller's office refer to the proposed liquidation of the Commercial and its consolidation with the American. They also refer to the transfer of assets accomplished under the resolutions of the directors of the two banks in advance of such liquidation. Unless this is borne in mind, the correspondence may not always be perfectly clear.

A few excerpts from the correspondence demonstrate that the Commercial transferred its assets to the American as security for amounts advanced by it, and that there was no sale of assets.

On August 1st, the day the resolutions were passed, the American wrote the Comptroller:

> "The exigencies of the situation were such that the directors of the Commercial National Bank, *as security for such advances as this bank will be called upon to make* hereunder, have transferred to this bank all the assets of the Commercial National Bank. This was done in contemplation of formal, voluntary liquidation of the Commercial National Bank by consolidation with this bank, but without issuing stock in this bank to the stockholders of the Commercial National Bank." (Tr. p. 995) (*Italics ours*).

This paragraph correctly states the contract between the two associations.

That the Comptroller understood the situation is indicated by his letter of the 7th:

> "Your letter of August 5th is received in reference to the *contemplated consolidation* of the Commercial National Bank of Macon with your association, the plan involving the liquidation of the former." (Tr. p. 999). (*Italics ours*).

The Comptroller having written that no examination of the assets of the Commercial transferred to the American would be made, "but all assets improperly taken over should be eliminated as soon as possible," the American replied:

> "We do not quite understand the meaning of the clause quoted. You have been furnished with a copy of the contract between the two associations and of the resolution passed by the stockholders of the Com-

mercial National Bank, appointing this bank liquidating agent and *authorizing it to hold all assets transferred to secure the payment of amounts advanced* and assumed by this association." (Letter Aug. 4, 1914. Tr. p. 1003). (*Italics ours*).

On October 1, 1914, in response to a request from the Comptroller with regard to reporting the assets and liabilities of the Commercial, the American wrote a full explanation of how the transaction had been handled. The letter stated that on August 1st the directors of the Commercial by resolution transferred to the American, "as security for amounts advanced and to be advanced to pay the depositors and other creditors of that bank, all of its assets;" that subsequently a contract had been made pursuant to the resolution; that a meeting of the shareholders was held on August 12th, at which time they had ratified the action of the directors and had passed a resolution for voluntary liquidation and appointed the American liquidating agent. The letter then continues:

> "Pending this action by the stockholders, we have not thought it proper to transfer absolutely, and as a part of the assets of this association, the assets of the Commercial National, nor to assume in toto its liabilities. The business between the two institutions has therefore been handled in the following manner:"

Then follows a detailed explanation of how the account between the two banks was handled.

> "*This account appears now overdrawn something more than* $500,000.00, and in our last published statement is included under the amount due from other national banks. Our statement of September 12th shows all of the assets of the Commercial which have been taken over by this association and all liabilities which we have assumed, but does not include *the assets*

*held as collateral for the overdrafts of the Commercial* nor the bills payable and certificates of deposit of the Commercial which have not yet matured, nor any of the deposits which have not yet been transferred to this assocation." (Tr p. 1007; *Italics ours.*)

On August 14, 1915, the American reported:

"The amount now due by the Commercial National Bank of Macon is $418,229.53." (Tr. p. 1018).

On July 25, 1916, the American advised:

"The account of the Commercial stands this date on our books as $207,306.64." (Tr. p. 1023).

On March 17, 1917, the American again reported:

"The account with the Commercial National Bank now amounting to $288,809.00, is being adjusted as rapidly as practicable. *We hold collateral security* on which it is estimated that $190,000.00 will be collected. From the sockholders of that bank we hope to collect, by suit in equity under section (2) of the Act of June 30, 1876, at least $100,000.00" (*Italics ours*; Tr. p. 1027).

The correspondence between the Commercial Bank and the Comptroller's office likewise refers to the proposed liquidation of that bank and its proposed consolidation with the American. There is no reference anywhere in the correspondence to a sale having already taken place or a consolidation having already been effected, the letter of August 3rd being typical. In this the Commercial advised that a meeting of shareholders had been called "for the purpose of consolidating with the American National Bank of this city by liquidation and the transfer of the assets of this bank to the American National Bank."

This letter continues:

> "The exigencies of the situation are such that the directors felt justified, in contemplation of action to this end by the stockholders, to perfect arrangements today by which the assets of this bank have been actually transferred to the American National Bank, and that bank has assumed the liabilities of this bank and will pay, on presentation, the liabilities of this bank." (Tr. p. 1030).

While this letter does not state that the assets were transferred as security, it certainly does not state that they had been sold or that absolute title had passed to the American. But in the letter of August 19, 1914, in reply to the letter from the Comptroller advising that the meeting held on August 12th was illegal, the Commercial states definitely how the American holds the assets:

> "*The assets of the association are now held by the American National Bank as security for advances made and to be paid on the liabilities of this association.* We understand that this is proper, although the formal liquidation cannot begin until the resolution has been passed by a two-thirds vote of the stockholders at a meeting properly called and held." (Tr. p. 1037; *Italics ours*).

After the legal meeting had been held on September 30th, the Cashier of the Commercial writes the Comptroller:

> "I beg to advise that on September 30, 1914, a resolution was passed by the stockholders of the Commercial Natioal Bank of Macon, placing the association in voluntary liquidation under the provisions of Secs. 5220 and 5221 of the United States Revised Statutes, said resolution being adopted by more than a two-thirds vote, thirty day's notice of the meeting having been given." (Tr. p. 1043).

There is no suggestion anywhere in the correspondence after this meeting was held that the Commercial understood that its status was anything other than that of a bank in voluntary liquidation. It is clear that it abandoned its purpose to consolidate with the American by the sale of its assets. By this time its assets had shrunk to such an extent that it had nothing to offer to induce a consolidation. The correspondence refers to liquidating reports, to examination of the bank's condition, and other matters ordinarily incident to voluntary liquidation, but makes no further reference to consolidation.

On October 27, 1914, the Cashier submitted affidavits showing the publication of the notice of liquidation, required by §5221 R. S. which was acknowledged by the Comptroller in his letter of October 30, 1914. (Tr. p. 1051).

It is true that the American passed a formal resolution assuming the circulating notes of the Commercial, and that after the shareholders of the Commercial had voted to place it in liquidation on September 30th, the bonds of the Commercial securing its circulation, which under resolution of the liquidating committee already referred to had been sold to and paid for by the American, were transferred from the account of the Commercial to the Treasurer of the United States in trust for the American. (See letter of the Comptroller dated October 15, 1914. Tr. p. 1010).

In connection with the correspondence between the two banks and the Comptroller's office, should be considered the reports made to the Comptroller. Those of the American beginning with the report of September 12, 1914, and being made at regular intervals, four or five times a year as called for, always included as an asset the overdraft of the Commercial. In the first one or two reports the over-

draft was included in the amounts "Due by Other National Banks", while in the subsequent reports it was included under the head of "Loans and Discounts," and in the later reports it was under the head, " Due by Commercial National Bank". (See testimony of E. C. Scott, Cashier. Tr. p. 662; Master's Report, p. 196).

The reports made by the American as liquidating agent of the Commercial, beginning with December 31, 1914, the end of the first quarter, and continuing until the time the evidence was taken, always showed the overdraft of the Commercial as a liability of that bank, under the head "Due American National Bank". (Tr. p. 663,7).

It should be borne in mind that these were official reports made to the department of the gevernment having direct oversight and control over national banks. If this overdraft of the Commercial had not been an asset of the American, the officers of the American would not have dared list as a liability of the Commercial a claim which they knew was not a liability, for a false report or a false statement of condition would have subjected them to the severest penalties.

## OTHER INSTANCES OF CONTEMPORANEOUS CONSTRUCTION SHOWN BY THE EVIDENCE.

In our opinion, the contract is perfectly clear and unambiguous. Its execution by the parties, as shown by the records of both banks, leaves nothing for construction. But if it be conceded that the contract is ambiguous, the construction placed upon it while it was in process of execution is overwhelmingly in favor of the theory of the appellee as to its meaning.

"When the language used by the parties to a con-

tract is ambiguous or of doubtful meaning, the practical interpretation given to it by the parties themselves when engaged in the performance of the agreement and before any controversy has arisen concerning it, is one of the best indications of its intent."
*Schofield v. State National Bank*, 97 *Fed.* 282-6 (8 *C. C. A.*).

This practical interpretation is shown by the plan adopted for keeping the account between the banks, by the minutes of the directors, and especially the minutes of the shareholders' committee, by the correspondence between Lewis, the Cashier, and the customers of the Commercial, its shareholders and its correspondent banks; to which reference has already been made.

But we may go still further. The evidence discloses that approximately half of the nominal assets of the bank consisted of claims against T. C. Parker and his various enterprises, E. N. Jelks and the Mallary corporations. These were the claims that got the bank in trouble, as shown by the report of the Fanance Committee on July 14, 1914. (Tr. p. 1064). These claims were, of course, included in the transfer of assets under the directors' resolution of August 1st.

On August 31, 1914, a contract was entered into between T. C. Parker and the Commercial and the American as its liquidating agent, and other parties, by which all of the Parker interests passed into the hands of a trustee. The contract shows that the Commercial, with other banks, held at the time of the contract large claims against the Parker companies. Under the terms of this contract, these interests were to be administered by a trustee under the direction of a committee representing the banks. As representing the Commercial and the American as its liquidating

agent, R. J. Taylor and Leon S. Dure were members of this committee. (Tr. pp. 1097-1107).

And on October 24, 1914, the Commercial entered into a contract with the Central Trust Company, T. C. Parker, and others, with a view to adjusting differences and conflicting claims to various securities held by the bank and claimed by the Central Trust Company. Under this contract the bank sold and transferred to the Trust Company notes "held and owned by said bank" of the Security Investment Company aggregating $32,450.00, together with bonds of that Company of the face value of $100,000.00; while the Trust Company sold and transferred to the bank notes aggregating $51,832.99, together with stocks and bonds of various corporations, including $150,000.00 of bonds of the Beechwood Farms. (Tr. pp. 1081-1097). Both these contracts, negotiated by the shareholders' committee, were formally approved by the Commercial's board of directors.

Parker having been forced into bankruptcy, on January 28, 1915 the Commercial proved two claims against his estate for $36,456.04 and $46,710.61, respectively. The bank also on December 19, 1914, proved two claims against the Parker Quarries Company, bankrupt: one for $7,800.00 and one for $5,976.13; and on March 26, 1915, it proved a claim against the Farish Brick Company, bankrupt (one of the Parker companies), for $19,008.99.

Surely it cannot be seriously contended that the Parker claims, amounting to $174,000.00, were sold outright to the American on August 1st.

E. N. Jelks was forced into bankruptcy within a few days after the transfer of August 1st. At the first meeting of creditors, held September 5, 1914, the Commercial

proved a claim in its own name and signed by its own officer amounting to $93,217.19. (Tr. p. 1081).

The minutes of the stockholders' committee are full of references to the efforts of that committee to protect the interest of the bank in the Mallary companies. At the first meeting of the committee Mr. Benton moved that the chairman request financial statements from all of these enterprises. (Tr. p. 564). On September 15, 1914, the committee had before it a typewritten statement prepared by F. L. Mallary, outlining the history and condition of his various concerns and their employees who were indebted to the bank. (Tr. p. 571). On October 17th the committee directed that F. L. Mallary be required to transfer to the bank the stock owned by him in his various corporations and give the committee authority to make necessary examinations of these enterprises, with a view to determining the value of the stock so that it might be accepted at an agreed valuation. This was again taken up at the meeting of October 21, 1914. (Tr. pp. 575, 576). On November 14, 1914, the Commercial filed an involuntary petition in bankruptcy against Mallary Mill Supply Company, one of the Mallary corporations, and on December 4th proved an unsecured claim against the company for $5,894.28. The books of the Commercial show that the stock of F. L. Mallary in Mallary & Taylor Iron Works was transferred to that bank and subsequently sold by it. (Tr. p. 1081).

The Commercial also proved claims against W. H. Roper, who had been connected with the Mallary enterprises, the claims being filed on Dec. 1, 1914, one for $11,075.00, and one for $4,738.64. (Tr. p. 1081).

In handling all of these large claims there are direct and unequivocal claims of ownership by the Commercial

which are inconsistent with the idea of an absolute sale of its assets previously made.

Nor is the evidence confined to formal or official acts. Note the letter of L. O. Benton to Leon S. Dure dated October 9, 1914, in which he refers to a proposed meeting of the shareholders' committee, the question being "turning over to the Central Trust Company certain assets belonging to the Commercial National Bank," and says that he would not care to be a party to a meeting where it is proposed "to turn over to the Central Trust Company any of the assets of the Commercial". (Tr. p. 1053).

Mr. Benton was the Chairman of the shareholders' meeting of August 12th, at which the contract between the banks was discussed, and that clause of the contract with reference to the shareholders' liability fully gone into.

Note also the letter of E. P. Mallary (a brother of President E. Y. Mallary), addressed to the shareholders' committee dated December 2, 1914, with reference to a sale of certain property belonging to S. C. Moore upon which the Commercial held a mortgage, Mr. Mallary desiring the affirmative approval of the committee before calling on the officers of the Commercial to make conveyance of the property. (Tr. p. 1051).

The letter of A. W. Lane the counsel of the bank and a member of its board of directors, dated October 23, 1915, is also illuminating. It appears from this letter that Mr. Lane had collected a claim in favor of the Commercial, that he deducted on account of the collection a fee of $500.00 and that he also deducted $1,500 "on account of fee for service rendered to the Commercial National Bank, and which said sum is accepted by me in full of my fee to date, so far as assets in the hands of the American National Bank

at the present time are concerned. This of course would not settle any claim that I may have for fees against the Commercial National Bank, nor is it intended to include the pending receivership case in the United States Court."

The balance Mr. Lane remits in a check payable to the order of the Commercial. (Tr. p. 969.)

Not only did the directors and shareholders recognize that the assets still remained the property of the Commercial, but it also appears that they undersood that the shareholders would be liable in the event the assets held by the American were insufficient to pay the amounts advanced.

John F. Lewis on August 18, 1914, after attending the shareholders' meeting held on August 11th, wrote to his nephew, E. N. Lewis, the Cashier of the Commercial, requesting the transfer of 150 shares of stock standing in his name, concluding his letter:

> "Kindly attend to this promptly and oblige, because there may be an assessment of the stockholders of the Commercial National Bank, and the Government might want to hold me on this stock." (Tr. p. 958).

Mr. Lewis' opinion, as time wore on, seemed to be strengthened, for in April, 1915, he wrote his nephew that "the prevaliing opinion was that the shareholders would be assessed." This we gather from E. N. Lewis' letter of April 9, 1915. (Tr. p. 961).

Mr. L. O. Benton, the President of any number of banks, also thoroughly understood the situation. We find him, within a day or two after the contract was made, undertaking to dispose of his stock in the Commercial; and a little later, having in the meantime served on the liquidating committee and realizing more fully the prospect of an

assessment, he sends in his stock certificates with the request that they be transferred, but he is plainly told that the transfer cannot be made, "as it is possible that an assessment may be made upon the stockholders in order to pay the indebtedness of the bank. No change of the present status, so far as it might affect the liability for this assessment, can be made."

(See letter of the Vice-President, Tr. p. 993.)

Not being able to escape liability by transferring the stock, Mr. Benton then proceeds to dissolve the Southern Securities & Financing Corporation, of which he was President and which held most of his Commercial stock. (See the proceedings to make these stockholders parties to this suit, set out in:

*Benton et al. v. American National Bank* 276 *Fed.* 368, (5 *C. C. A.* ).

Birdsey, a shareholder, immediately after the meeting of shareholders on August 12th, filed a bill in the Superior Court of Bibb County, Georgia, for the appointment of a receiver to take charge of the assets of the Commercial, his reason being that it was necessary that the assets should be administered in this way in order to avoid an assessment of the shareholders. (See the report of this case: *Birdsey* v. *Commercial National Bank,* 143 *Ga.,* 627).

On November 3, 1914, Patterson and Payne, as shareholders, filed a bill in the United States District Court against the Commercial, its directors and the members of its shareholders' committee and also of another special committee of shareholders, praying for the appointment of a receiver. The bill alleged that the assets had been transferred to the American, and that the Commercial had guaranteed that enough would be realized out of the assets to pay

the liabilities assumed by the American. The principal ground upon which relief was prayed was that the assets should be preserved in order to protect the shareholders from the liability of an assessment.

The answer to this bill, filed on behalf of the bank, of the members of its board of directors, and of the shareholders named as parties, verified by its Vice-President and signed by its General Counsel, sets forth with remarkable clearness the transaction between the two banks and the then status of the Commercial and its assets. There is not in all this voluminous answer the slightest reference to a sale of the assets, nor to a consolidation between the two banks.

The answer, set out in large part in the transcript, is of the greatest interest. (Tr. p. 984). Its averments are solemn admissions in judicio that the assets of the bank were transferred to the American as liquidating agent and were held by it as such at the time the answer was filed. It is also admitted that by agreement the American advanced the money to pay off the Commercial's debts, and that the Commercial is in voluntary liquidation, the liquidation being conducted under the direction of the committee of shareholders and of the board of directors.

It is inconceivable that these admissions would have been made if, as a matter of fact, the assets had been sold to the American, or if the parties had understood that what they did amounted to a consolidation of the two banks.

The answer of the American in this case sets up plainly, and in so many words, that it held the assets as security for advances made by it, and that after exhausting the assets in

paying its debt intended to resort to the shareholders' liability for whatever balance might be due it.

All parties, therefore, concurred, thus early in the liquidation of the Commercial, as to its status and as to the capacity in which the American held its assets.

### THE NEWSPAPER ADVERTISEMENTS.

Appellants refer again and again to the advertisements appearing in the newspapers the day after the resolutions of the directors of the two banks were passed.

An examination of these advertisements makes it apparent there had been some sort of merger of "assets and business", that while the purpose was to create the impression that a merger *de jure* of the banks themselves had not been effected. In both advertisements the depositors of the Commercial are requested to check on that bank until they transfer their accounts or make other arrangements. The advertisement of the Commercial calls attention to a meeting of the shareholders to be held in the future, and under the law there could be no consolidation or merger without the authority of the shareholders. That it was the purpose to merge the *"business"* of the two banks is unquestionably true, and this is all these advertisements say.

The Fourth Circuit Court of Appeals having under consideration a contract by which one bank purchased the assets and business of another and assumed its deposits and bills payable, held that this did not constitute a merger or consolidation of the two banks. An advertisement quite similar to those in the instant case was insisted on as showing a merger, but the Court said:

> "It is true that, in the advertisement of the change of business published by the First National Bank af-

ter its contract with the trust company, the change was referred to as a consolidation and merger. But that could not change the actual nature of the transaction, and it could not operate as an estoppel in favor of the Baltimore bank, because it did not act upon it."

*Drover's & Mechanics' Nat. Bank v. First Nat. Bank* 260 *Fed.*, 9 (4 *C. C. A.*).

As was said by Judge Bryan:

"The newspaper advertisements are not important. They were undoubtedly intended to bridge over a crisis and to allay any feeling of uneasiness on the part of depositors in the Continental Bank. Neither party was estopped by anything stated in them from asserting any contractual right or obligation it possessed." (Tr. 1175).

**APPELLEE'S CASE, BOTH UNDER THE CONTRACT AND UNDER THE EVIDENCE, HAS BEEN SUSTAINED.**

Appellants contend that the Court of Appeals held on the first appeal that the contract between the two banks was ambiguous and that the American's right to recover was altogether dependent upon the conduct of the parties and the construction placed by them upon the contract and the resolutions upon which it was based. The Circuit Court of Appeals does not agree with this construction of its first opinion. Says Judge Bryan:

"But the construction is untenable that the opinion on the former appeal held that the contract was ambiguous. Both the contract and the conduct alleged in pursuance of it were discussed and the opinion was based on both."

Proceeding on the theory that Appellee's right to recover depended solely on the construction of the contract by the parties, Appellants argue that the Fourth, Fifth

and Sixth paragraphs of the amendment to the bill were not proved. This argument is answered conclusively by the Circuit Court of Appeals.

The Fourth paragraph alleged that it was *agreed* that the Commercial's debt to the American should be carried as an overdraft. This "agreement" could not be proved on account of the death of the two active officers of the Commercial. But the Court of Appeals holds, as did the Master, that the averment "is susceptible of proof by the undisputed fact that it was represented by that method."

The Fifth paragraph alleged that for a short time, "some two weeks", the Commercial continued in active operation. This the Court holds "is sustained by the evidence."

The Sixth paragraph sets out a resolution of the Commercial's board of directors authorizing the sale of the bank building to the American for $40,000.00, the amount "to be credited on the indebtedness of the Commercial to the American." This resolution did not appear in the directors' minute book, and the directors, while recalling the fact of the meeting at which a resolution to sell the building to the American at that price was passed, did not remember the verbiage of the resolution. The building was in fact sold to the American and the $40,000.00 purchase price was in fact credited on the Commercial's overdraft. While this particular resolution was not proved, a dozen others equally as significant were proved and appear in the record.

These are the only averments about which even the Appellants contend there is any doubt as to the sufficiency of the proof. None of them, singly or together, are essential to Appellee's case—but all are substantially proved.

"The contract and various resolutions and the conduct of the parties throughout are all consistent with the theory of a loan * * *. The transactions are inconsistent throughout with the theory of a sale, * * *. The decree of the Court is well sustained by the evidence." Bryan, C. J., (Tr. 1174-6).

THE FALLACY OF APPELLANTS' ARGUMENT.

Appellants do not attempt to discuss as a whole either the contract or the evidence showing its construction by the parties. They content themselves with certain isolated sentences which seem to support the theory that there was a sale of its assets by the Commercial to the American or a consolidation of the two banks. The fallacy of this argument was pointed out by Judge Walker in the opinion of the Court of Appeals when the case was first before that Court:

"Provisions contained in the contract give some color to this construction [that there was a sale of assets or a consolidation] if they are considered by themselves without due regard to the remainder of the contract, the situation with which it dealt, and the conduct of the parties to the contract while performance under it was in progress evidencing what each of them understood was the effect of a compliance by the American Bank with the obligations imposed upon it by the contract." * * *

"The provisions referred to * * * * lose the significence sought to be attributed to them when they are considered in connection with other provisions contained in the contract and in the light of the situation existing when the contract was made and for some time afterwards, and of the construction of the contract by both parties to it as disclosed by what was done under it." (Tr. p. 1167).

## IN CONCLUSION.

We respectfully submit that the contract is not ambiguous and that it has been construed correctly by the Circuit Court of Appeals; that the contemporaneous construction of the parties while they were operating under it demonstrates that the transaction was a loan of money and not a purchase of assets; that the averments of the bill as amended have been proved; that the report of the Master, approved by the District Judge, is fully sustained by the evidence; that both opinions of the Circuit Court of Appeals are sound and in accord with the law as announced by this Court; that the decree is the only one that could have been entered on the record as made, and that it should be affirmed.

Respectfully submitted,

ORVILLE A. PARK,
GEORGE S. JONES,

Solicitors for Appellee.

Jones, Park & Johnston of Counsel.

# HIGHTOWER ET AL. *v.* AMERICAN NATIONAL BANK OF MACON, GEORGIA.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 25. Argued January 25, 1923.—Decided December 3, 1923.

1. A contract between two national banks under which the assets of the one were transferred to the other and the latter assumed the liabilities of the former and advanced money, in excess of the assets, to pay the liabilities and expenses, *construed* as intending, not a sale, but a pledge of the assets, as security for repayment of the money advanced. Pp. 353, 358.
2. Where a national bank, in financial difficulty, but still in active operation and not thought to be insolvent, to protect the interests of its creditors and shareholders made a contract by authority of its directors with another national bank, whereby the second bank assumed the liabilities of the first, took over its assets as security, and paid the debts by means of the assets and its own funds, acting finally as liquidating agent after the shareholders of the first bank had ratified the contract and ordered liquidation under Rev. Stats., § 5220,—*held*, that the contract was valid; and that the claim of the second bank for money advanced in excess of the assets was not created during the liquidation but was a debt arising under the contract for which the shareholders of the liquidated bank were liable under Rev. Stats., § 5151, as amended. P. 360.

276 Fed. 371, affirmed.

APPEAL from a decree of the Circuit Court of Appeals, which affirmed a decree of the District Court awarding

recoveries to the appellee bank, as plaintiff, in its suit to enforce the liabilities of the defendants (here appellants) as shareholders of another national bank.

*Mr. John E. Hall*, with whom *Mr. Charles L. Bartlett*, *Mr. Charles Akerman*, *Mr. Richard C. Jordan*, *Mr. Thomas E. Ryals*, *Mr. Robert L. Anderson*, *Mr. Warren Grice*, *Mr. Charles J. Bloch* and *Mr. A. O. B. Sparks* were on the brief, for appellants.

*Mr. Orville A. Park*, with whom *Mr. George S. Jones* was on the brief, for appellee.

Mr. Justice Van Devanter delivered the opinion of the Court.

This is a suit in equity, in the nature of a creditor's bill, against a national bank and its shareholders to enforce the liability of the shareholders for the bank's debts. The plaintiff is another national bank and sues on behalf of all creditors, although insisting it is the only one. The District Court dismissed the bill as not stating a cause of action, 246 Fed. 721, and 248 Fed. 187; but the Circuit Court of Appeals thought the bill good and reversed that decree. 254 Fed. 249. The defendants answered; the evidence was taken before a master and reported with advisory findings, and a decree was entered by the District Court establishing the plaintiff's claim as a debt—the only unsettled obligation—of the defendant bank, and awarding recoveries from the several shareholders in sums conforming to their holdings. That decree was affirmed by the Circuit Court of Appeals, 276 Fed. 371, and the defendants appealed to this Court.

The record is a large one and shows that the parties brought out everything of an evidential character bearing on the issues. On all questions of fact the master and the two courts below were in full accord, and there was ample evidence to sustain their findings.

Both banks were located at Macon, Georgia, the plaintiff being known as the American National and the other as the Commercial National. In the summer of 1914 they entered into a contract looking to a winding up of the affairs of the Commercial National, and providing for a transfer of its assets to the American National and the assumption and payment of its liabilities by the latter. When the suit was brought all that was to be done under the contract was practically completed, save that the obligation, if there was such, to reimburse the American National for advancing moneys to pay the Commercial National's liabilities had not been fulfilled.

The questions presented to us for decision turn largely on the construction and legal effect of the contract and are, first, whether the transfer of the Commercial National's assets was made by way of an outright sale, or by way of giving security for the repayment of the moneys advanced by the American National under the contract, and, secondly, if repayment was required, whether that is a debt or engagement for which the Commercial National's shareholders are liable.

The statutes in connection with which the contract and these questions must be examined are as follows:

"The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares." Rev. Stats., § 5151; Act December 23, 1913, c. 6, § 23, 38 Stat. 273.

"Any [national banking] association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock." Rev. Stats., § 5220.

"When any national banking association shall have gone into liquidation under the provisions of section five

thousand two hundred and twenty of said statutes, the individual liability of the shareholders provided for by section fifty-one hundred and fifty-one of said statutes, may be enforced by any creditor of such association, by bill in equity, in the nature of a creditor's bill," etc. Act June 30, 1876, c. 156, § 2, 19 Stat. 63.

The contract was made in pursuance of resolutions passed by the directors of both banks, and was ratified and approved by a resolution of the Commercial National's shareholders. These resolutions and the contract are all set forth at length in the opinion of the Circuit Court of Appeals delivered on the first appeal to that court, 254 Fed. 249, and need not be reproduced here.

The primary purpose in what was done was to relieve the Commercial National from an existing embarrassment, to conserve its assets and to subserve the interests of its creditors and stockholders. That bank, although having assets thought at the time to be in excess of its liabilities, was in need of very substantial assistance. It had made excessive and improvident loans, had borrowed beyond an admissible limit, had permitted its available cash to fall below a reasonable minimum, had been criticised by the Comptroller for these departures, had become the subject of disturbing rumors and was not in condition to withstand a run by depositors. It had sought assistance from the American National, and the latter had manifested a disposition to help within prudent limits. Various courses had been informally suggested without receiving definite approval, among them being a voluntary liquidation of the Commercial National under the statute before cited, a consolidation of the two banks, an outright sale of the Commercial National's assets to the American National at an agreed or fixed valuation, and a transfer of the assets, or a large part of them, to the American National as collateral to secure repayment to it of moneys to be advanced by it to meet the Com-

mercial National's needs. All of these proceeded on the theory that the depositors and other creditors of that bank should be paid as and when payment was demanded, that money in large amounts would be required for the purpose, and that the money should be provided or obtained in a way which would permit an orderly and advantageous realization on the Commercial National's assets and not involve any sacrifice of their real value.

The resolution of the directors of the Commercial National, as also that of the directors of the American National, was passed August 1, 1914; the contract was signed August 11, and the ratifying resolution of the Commercial National's shareholders was passed September 30.

The resolution of the Commercial National's directors left the questions of voluntary liquidation and consolidation to the consideration and action of the shareholders, but expressly authorized the bank's officers to transfer all of its assets to the American National "as cash" (meaning at an agreed or fixed cash valuation) or "as collateral" to secure that bank for moneys "advanced" to pay liabilities of the Commercial National, "the details" being committed "to the discretion" of such officers and they being empowered to enter into any necessary or appropriate contract. The resolution of the American National's directors said nothing about consolidation and only incidentally referred to voluntary liquidation, but expressly assented to the assumption and payment by that bank of the liabilities of the Commercial National "upon condition" that the latter transfer to the American National "as cash or collateral" sufficient assets to afford it full and satisfactory protection. This resolution, like the other, committed the adjustment of details to the discretion of the bank's officers.

Immediately following the adoption of these directors' resolutions the Commercial National's assets were deliv-

ered into the custody or keeping of the American National, but were not delivered "as cash" or at an agreed or fixed valuation. Thereupon, and on the faith of such delivery, the American National began advancing moneys with which to pay depositors and other creditors of the Commercial National.

The contract, signed ten days later, recites the substance of the directors' resolutions, but refers to them as authorizing a transfer of the assets "as security", instead of "as cash or security." It further recites that "the assets of the Commercial National have been delivered to the American National" and then in six numbered paragraphs proceeds to state the terms and details of the engagement. The first paragraph purports to transfer all the assets in present terms, contains no qualifying words, and, when taken alone, appears to pass the title absolutely and without reservation. The second and third paragraphs declare that the officers and directors of the Commercial National will call a meeting of its shareholders and procure from them resolutions (a) providing for the liquidation of that bank under the statute, (b) authorizing the consolidation of the two banks "by the purchase of the assets of the Commercial National by the American National," but without the issue of stock in the latter to the shareholders of the former, (c) ratifying and confirming the action of the Commercial National's directors before recited and "this contract," and (d) designating the American National as liquidating agent to conduct the liquidation of the Commercial National according to the statute and under the supervision of the Commercial National's directors. The fourth paragraph provides that the Commercial National shall maintain its corporate existence until the completion of its liquidation. The fifth paragraph declares without qualification that the American National assumes and promises to pay, as and when payment is demanded, all

the liabilities of the Commercial National, including the redemption of its circulating notes. The sixth paragraph, which obviously is explanatory of some of the others, particularly of the first and fifth, reads as follows:

"VI. That said American National Bank will accept the appointment as liquidating agent of said Commercial National Bank, and will proceed with all due and reasonable diligence to liquidate said association and to collect and reduce to cash all the assets of said association, all of said assets to be held as security by said American National Bank for all advances made by it in paying the depositors and other liabilities of said Commercial National Bank and the actual expenses incurred by said American National Bank in realizing on said assets; and that after deducting from the proceeds of said assets the actual expenses incurred by said American National Bank in liquidating said association and acting as liquidating agent and in collecting said assets and realizing upon the same, it will apply said proceeds, first, in repaying to itself all amounts advanced by it hereunder, with interest thereon at the rate of seven (7%) per cent. per annum; next, in discharging the liabilities of said Commercial National Bank which shall not have been paid by advances made by said American National Bank; and that when all of said liabilities have been fully discharged it will account to the shareholders of said Commercial National Bank and from time to time pay over to said shareholders pro rata the surplus remaining in its hands from the proceeds of said assets; said American National Bank to act as such liquidating agent without compensation for its own services.

"It being distinctly agreed and understood that in the event the said liquidation should be interrupted or discontinued for any reason beyond the control of said American National Bank, then and in that event said American National Bank shall and does hold all of the

assets of said Commercial National Bank as security for the advances which may have been made by it, up to the time such liquidation may be so discontinued.

"And it being further distinctly agreed and understood that neither the resolutions of said boards of directors of said associations nor this contract shall relieve the shareholders of the Commercial National Bank from their legal liability as shareholders to respond, in the event it may be necessary to have recourse upon such shareholders' liability, for any deficit which may remain after exhausting the other assets of said association in the payment of its liabilities."

The appellants lay some emphasis on what is said in the second and third paragraphs about procuring from the shareholders a resolution authorizing a consolidation of the two banks by one purchasing the assets of the other. But we think it is of no importance here. In itself it could have no force save as a solicitation of action by the shareholders. They did not respond to it. No such resolution was adopted, and the tentative proposal failed. The reason is apparent. The shareholders' meeting was had fifty days after the contract was signed. In the meantime the Commercial National's affairs had been subjected to close examination and found to be such that a consolidation was not at all feasible. At that meeting, however, the shareholders did, by a vote representing two-thirds of all the shares, ratify and confirm the contract, put the bank into voluntary liquidation under the statute, designate the American National as liquidating agent and appoint a committee of five shareholders to advise with and assist the liquidating agent and directors throughout the course of the liquidation.

The chief contention of the appellants is that the transaction between the two banks was not a pledging or hypothecation of the assets as security for the repayment of advances to pay liabilities, but an outright sale of the

assets in consideration of an unqualified assumption of the liabilities. We agree with the Circuit Court of Appeals in thinking the assets were not sold but pledged as security.

It is quite true that the first and fifth paragraphs of the contract, if separated from the others, make for the view that the transfer of assets and the assumption of liabilities were without qualification or reservation,—each as the full consideration for the other. But the contract consists of much more than those paragraphs and must be examined as a whole to determine the nature of the transaction of which it is a memorial. In the sixth paragraph the parties definitely explain the purpose with which the assets were transferred and the nature of the engagement by which payment of the liabilities was assumed. That paragraph cannot be disregarded. To do so would be much like determining the nature and effect of a mortgage deed without considering the defeasance clause. The paragraph shows that the American National was to hold the assets "as security" for "all advances" made by it to pay liabilities and expenses; that it was to reduce the assets to cash with reasonable diligence and apply the proceeds in "repaying" "all amounts advanced" by it "with interest" added, and that if, for any reason beyond its control, the liquidation should be discontinued, it should hold the assets "as security" for its "advances" up to that time. The paragraph also recognizes that in the end there might be either a surplus or deficiency of proceeds from the assets, and deals with both contingencies,—with a possible surplus by directing that the same be paid to the Commercial National's shareholders pro rata, and with a possible deficiency by declaring that neither the directors' resolutions nor the contract "shall relieve the shareholders" from their "legal liability as shareholders to respond." The rational and necessary conclusion from these provisions is that the

moneys advanced were loaned and were to be repaid with interest, that the assets were transferred as security for such repayment and that the resulting relations between the banks were those of debtor and creditor and pledgor and pledgee.

The Circuit Court of Appeals fortified its conclusion in this regard by showing that throughout the period in which the contract was in process of execution the officers of the two banks, their directors and the shareholders' committee of the Commercial National put a like construction on it. We agree that this is so, but extended comment on that course of action would serve no purpose, because, in our opinion, the contract as a whole does not admit of any other construction.

The remaining contention is that the debt sought to be enforced was created during the process of liquidation, and therefore is not one for which the shareholders are liable. The premise is faulty. The debt arose from the contract and represents moneys advanced in excess of what was realized from the assets. When the contract was made the bank was in active operation, and it remained so for a short period thereafter. It was cashing checks, receiving deposits, clearing checks through the clearing house, checking on its deposits in other banks and otherwise conducting a banking business. True, its business was conducted in quarters assigned to it in the banking house of the American National, but it was acting through its own officers, tellers and employees. It had not been pronounced insolvent, nor was it then thought to be so. The process of liquidation under the statute began fifty days after the contract was made. There was power to make the contract. The purpose was not to obtain money to engage in new business, but simply to change from many creditors to one. Nor was the contract made in derogation of the rights of the shareholders. One of its purposes was to subserve their interests, and this

was recognized when they ratified and confirmed it. Under prior decisions the contention must fail. *Wyman* v. *Wallace*, 201 U. S. 230; *Poppleton* v. *Wallace*, 201 U. S. 245.

The amount of the debt is not questioned.

*Decree affirmed.*

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KING COUNTY, WASHINGTON, *v.* SEATTLE